CATHOLIC EDUCATION SERIES

CIVIL GOVERNMENT
IN THE
UNITED STATES

By

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USEFUL BOOKS FOR TEACHERS OF CIVIL GOVERNMENT

ACTUAL GOVERNMENT IN THE UNITED STATES, by A. B. Hart.

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THE FEDERALIST, edited by Henry Cabot Lodge.

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JOURNAL OF THE CONSTITUTIONAL CONVENTION, by James Madison.

POLITICAL SCIENCE AND CONSTITUTIONAL LAW, 2 Vols., by J. W. Burgess.

INTRODUCTION TO POLITICAL SCIENCE, by J. Wilford Garner.

PREFACE FOR TEACHERS

Perhaps the first point to be noticed by a teacher examining this book will be the number of paragraphs in small print. Though these illustrate the topics concisely treated in larger print, most of them are not intended for the use of the student, but have been retained, from an earlier type-written form, for the convenience of the teacher, who may not always have at hand a good collection in American history.

Another peculiarity of this volume is the treatment of the Federal Constitution before the State constitutions. The author is familiar with the logical system of instruction which introduces boys and girls to their back yards before they explore their lawns and descry the far-off sidewalks, which gives them a peep at adjacent gardens and then makes them acquainted with the wonders of the nearest town. Afterward visits to the county seat, to the State capital, and to the National capital fill out what seems, as well in geography as in civil government, the very scheme of nature itself. This book could have introduced the pupil to the *road district,* the *school district,* the *township,* and so on in the time-honored fashion. The objection to this pseudo-scientific system is that from the point of view of the student it conducts him over a tract that is sterility itself.

Of the merits of the method adopted in this book there is no room for doubt. The experiment, if one chooses so to call it, is, in the knowledge of the author, many years old and in a variety of tests has been singularly successful. It has been tried in high schools, in colleges, and in university work with teachers. Those who have never had a grasp of this science have found it a pleasure, after reading these chapters, to take up more advanced studies.

A simpler style of presentation and an omission of such

topics as require maturity of years should adapt this system to the needs of the grammar school. But no text book on Civil Government can absolve the teacher who uses it from special training in the Constitutional History of the United States. On the part of the pupil as much effort will be required to master the contents of this book as is usually bestowed upon higher arithmetic.

It need hardly be remarked that in a branch of knowledge admittedly so dry as Civil Government it is only the wide reader who can make it interesting and profitable. In this field natural ability is not all in all; perhaps industry is the most desirable gift. These considerations have suggested the preparation, not of a complete bibliography, which few teachers have time to master, but a brief list of useful books on this and on cognate subjects. The proof sheets of the entire volume have had the benefits of a careful reading by Mr. Chas. C. Tansill, A. M.

CHARLES H. MCCARTHY.

Washington, D. C.,
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HINTS TO STUDENTS

To get the best results from the use of this book the pupil should, wherever it is practicable to do so, adopt the following plan of study. Read carefully the first five pages and note that each has one or more indented margins with a hint in italics on the subject of each paragraph. For example, when the pupil has read the first page, he is plainly told that he should know his United States History, and that he will not and can not understand this subject unless he learn the meaning of certain important terms that are to be constantly used. These words will be fully explained once, but they will not be taken up a second time. The second page tells something about the branch to be studied. By turning to page 199 and the pages following the student will find "Review Questions" on every chapter in the book. There are two questions asked concerning the matter in the first paragraph of page 2. The second paragraph of page 2 is completed on page 3, where the pupil will find an explanation of the reveiw question, "What is the fundamental idea in the word *constitution?*" Pages two and three will give the answer. Number 4, of the review questions, is answered on page 3. The remaining pages of chapter I are to be worked out in the same way. Chapter II is to be learned just as United States History lessons have been, for that is precisely what it is, a review of certain topics in American Political History. Our subject proper is American Constitutional History, or Civil Government in the United States. The same remark will do for chapter III. On this matter the student must be reminded that the list of questions on pages 199-205 is by no means complete. His teacher will make up many more. Those in the book are specimen questions.

When the student takes up chapter V, he should turn to Appendix B, page 214, which is a copy of the Constitution of the United States, and get very familiar with the *Preamble,* in fact, it is worth memorizing. At this time he should read no farther than the Preamble. After doing so, he should see what is said in the text, pages 39-42, on the subject of preambles. Then he should turn to page 200, review questions, and find out whether there are any questions on the subject of preambles. Finally, he should look into a dictionary and learn the derivation of the word preamble. He will then know something about the first part of the Constitution of the United States, that is, about the *preamble.* Every part of the Constitution should be worked out with equal care and should be so often reviewed that it becomes a part of the pupil. Besides it will help him to look up things for himself, and it is from the constant effort to find out facts for himself that the student will acquire an education.

The next division of the Constitution, namely, the Frame of Government, is of the greatest importance and should be taken up in the same manner as the beginning of chapter V. Let the student turn to Article I and read section 1; then read pages 43-44, note what is said there, and see whether there are any review questions on the pages thus read. In section 1 some things are said and some things are implied. It is said that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The fact implied is that neither the President nor the United States Courts can pass laws, for the power to do so is vested in Congress.

When all the Constitution has become familiar, the *Articles of Confederation,* Appendix A, page 206, can be read over, and those parts pointed out that have found a place in

the Constitution. The Articles can be contrasted with the Constitution as to the organization of the Congress in each system; also the organization of the Executive and the Judicial Departments. The student should learn how the General Government obtained its revenue under the old and how it obtains it under the new constitution. It is desirable to become familiar with the language of the Constitution, but it is much more desirable to *understand* it.

THE AUTHOR.

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CHAPTER I

INTRODUCTION

For including in any serious programme of study an exposition of our Federal Constitution no apology appears to be required. Unless, however, this exposition can suggest how the more intricate parts may be simplified and the less attractive made interesting, it is not easy to perceive any sufficient reason for adding to the body of literature on any portion of the civil government of the United States. That both objects can be accomplished, at least in part, is the opinion of the writer. Nevertheless, this is not the only reason for preparing the following chapters on the Civil Government of the United States. A careful observance of methods which are in accordance with fundamental principles and which have long been tested in the class room, will, it is believed, prove of value to both teachers and pupils. The succeeding pages, therefore, will, as far as practicable, illustrate methods of instruction which in the author's experience as a teacher have been found satisfactory.

Political Terms Must be Understood.

Clearly to understand this proposed method, however, the pupil must have well in mind a few fundamental ideas concerning the meaning of certain political terms; also an accurate acquaintance with the main outlines of American political history. This information may be obtained from almost any of the popular grammar school histories of the United States. This introduction, therefore, will be chiefly concerned with an attempt to define certain terms which we shall have occasion constantly to use. After explaining a few of these political

terms there will be given a concise account of the Convention that framed the Constitution of the United States.

Name of Subject.

Before discussing fundamental ideas in government it may be of some assistance to the student particularly to direct his attention to the popular name of our subject, *viz., Civil Government in the United States.* In this title he will at once perceive the implication that there could be a science of civil government in Great Britain, civil government in France, civil government in Germany, *etc.* It will be no less obvious that there can be a species of government which, unlike civil government, does not derive its authority from the citizen, but which may be imposed on him by some outside power. Such, for instance, is military government. This species has prevailed temporarily in many parts of the United States. His historical information may tell the student that there can be government which is neither civil nor military.

Power of Local Officials Limited.

Probably there are few pupils who do not know that in their own village, town or city certain sets of men administer government. Now these men cannot do everything that they may desire to do. They cannot, for instance, take property which belongs to Mr. Brown and give it to Mr. White. They cannot carry off to the jail or to the station-house and keep there as long as they please a law-abiding member of the community. To take the property of one man and give it to another would be not an act of government, but an act of oppression. To confine in jail a person who has committed no crime would likewise be an act of oppression and, if frequently repeated, would lead to great disorder in the community. To prevent this disorder and oppression the powers of the governing officials are carefully limited. It may be by a custom which has long been observed in the community. With us, however,

these limitations are set down in written documents. The fundamental notion of a constitution, then, is that it is a restraint on those who exercise the powers of government. Our Federal Constitution not only restrains our rulers, but it also makes up or constitutes the government in a particular form; it distributes powers among certain departments; it provides a method for its own amendment, and guarantees certain rights to individuals. On a later occasion these ideas will be more fully discussed.

A Constitution Defined.

The words *nation, state,* and *government* also require some explanation. These terms can be illustrated by the history of the Jewish people. From the familiar account in the Bible it will be remembered that because of famine, which prevailed in their own country, the descendants of Abraham became acquainted with the wealth and other advantages of Egypt. Joseph, who had long before been sold into slavery, had risen high in the councils of that nation and had won the confidence of its ruler. This circumstance persuaded the members of his family to join him there and gain some of its advantages. At first they were encouraged by the Egyptian authorities, and in the course of time became exceedingly numerous. Later they suffered great hardships, and to escape from their oppressors returned, by way of the Red Sea, to Asia. After a long sojourn in the wilderness they were permitted to occupy the Promised Land. The history of this people will explain what scientific writers mean by saying that the word nation is "family writ large." The term nation, from *nascor,* has reference to birth or kinship, that is, descent from a common ancestor. It follows naturally that the people of such a nation speak a common language and have similar institutions. In a word, this people first appears as a family; when they become sufficiently numerous

Nation Defined.

they are spoken of as a nation. Later when they established themselves in the country along the Jordan, and organized themselves politically, they became a *state.* Their judges at first and afterward their kings, who ruled them and represented them in their intercourse with the neighboring powers, were the heads of their *government.*

State.

Government.

If it is preferred, contemporary illustrations can be given. As being more familiar Great Britain is, perhaps, a better illustration. That island is the home of three nations, *viz.,* the English, the Welsh, and the Scots. Together they form one state and have but one government. Austria-Hungary, too, is one state; for imperial purposes it has only one government, but under the authority of that government are found many nations. That country is in fact a veritable Tower of Babel. Many of the nations in Austria-Hungary have languages and even literatures of their own. The most important of these ethnical elements are the Hungarians, the Germans, the Slavs and the Italians. In this view Ireland is a nation; it is also politically organized, but it is as government not as state that it is so organized. The next paragraph will, perhaps, serve to make this distinction still clearer.

It is not now intended to explain the various forms of the government and of the state. With respect to their objects states could be classified differently. The aim of the state might be military in character; it could apply its resources and energies in an endeavor to extend its dominion. Its object could be the promotion of art, of religion, of education. It is not, however, in respect to their objects but because of their forms that states are commonly classified.

Classification of States.

On this subject the great classic authority is Aristotle, but

in the Hellenic world of his day the state was merely a walled city. At that time, too, states and governments were often confounded. Therefore we do not certainly know whether the great philosopher was thinking of the state or of the government when he defined monarchy as the rule of one, aristocracy as the rule of the minority and democracy as the rule of the masses. The body of literature on this topic is very great but the subject has by no means been made perfectly clear. From the point of view of the political scientist the state may be described as the highest human power operating on a given population. This is simply another way of saying that it is sovereign, and in public law sovereignty is considered indivisible.

Aristotle's Definitions.

State Defined.

Professor Burgess, the clearest writer on this subject, says that there is no such thing as a federal state; that what is really meant by the phrase is "a dual system of government under a common sovereignty."* Nevertheless, writers of undoubted reputation employ the expression. Its further discussion would be somewhat out of place in a brief introduction to a series of rather elementary lessons.

Other words that require discussion are *inhabitant* (or resident), *citizen,* and *voter.* As a term of literature the first seems to require no special emphasis. Any human being making his home or dwelling permanently in a given district is an inhabitant of that territory, and is to be distinguished from a visitor. According to the Thirteenth Census, that of 1910, the number of inhabitants in the United States is 91,972,266.

The term citizen is more difficult to explain. In the Fourteenth Amendment of the Constitution, it is true, we are told that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

* *Political Science and Constitutional Law,* Vol. I, p. 78.

the United States and of the state wherein they reside." By attempting at the outset to make no distinction between state citizenship and United States citizenship a part of the difficulty inherent in this term can be avoided, or, at any rate, it can with advantage be adjourned to a later stage. There remain, however, other difficulties embedded in this legal language. What is naturalization? What classes of persons born in the United States are not subject to their jurisdiction? By indicating some of the privileges of United States citizenship even young pupils, it is believed, can learn to distinguish an American citizen from a mere visitor or even a domiciliated stranger.

Difficulties in Defining Citizenship.

The law books say that a citizen of the United States, as such, has the right, (*a*) to engage in either interstate or foreign commerce; (*b*) to enjoy the benefit of the postal laws; (*c*) in common with others to make use of the navigable waters of the United States; (*d*) to pass from state to state; (*e*) to travel into foreign countries.* If otherwise qualified, he has also a right to hold public office; to serve on juries, to bring suit in the United States Courts, and when travelling on the high seas or in the territory of a foreign power to receive the protection of the United States Government.

Rights and Privileges of a Citizen.

Formerly it was said, and it was then essentially true, that the principal differences in privilege between an alien and a citizen consist in these: an alien residing in the United States is here merely by sufferance; he cannot own real estate nor can be exercise political rights here. But these differences do not always exist; the states of the Union recognize fully the right of aliens to reside within their limits, and in many states they are permitted freely to hold and to transmit to their descendants real estate. Many states permit aliens, after a short residence therein, and after

* Cooley, *Principles of Constitutional Law*, 1880, p. 245.

declaring their intention to become citizens, to exercise the elective franchise. When an alien is thus given the privilege permanently to reside within a state, and to hold property of all kinds therein, and to exercise the privilege of suffrage, the distinction in right and privilege and immunity between him and a citizen is not very plain.*

As no state can naturalize an alien, so no state can confer upon him "all privileges and immunities of citizens in the several states." Precisely what is comprehended in this guaranty is not entirely clear, though political and judicial interpretations, to be noticed below, assist us somewhat in understanding them. In her first constitution Missouri inserted a provision for excluding from her territory all free persons of color, but in Massachusetts such persons were full citizens, and, therefore, it was held that the proposed discrimination against free negroes was in violation of the provision quoted. This phase of that famous controversy was settled by the solemn assurance of the Missouri legislature that the obnoxious provision would never be enforced.

Immunities and Privileges of Citizens.

From this it may fairly be inferred that the right of ingress into and egress from a state is one of the privileges and immunities guaranteed by the Federal Constitution; also the right to sojourn there and to engage in any lawful pursuit.

Naturalization Defined.

Concerning naturalization it is necessary here only to observe that it is the legal process by which an alien or foreigner is made a citizen. It cannot too often be repeated that the states cannot naturalize, though they may confer upon aliens the right to vote. From this it follows that in some states there are persons who are allowed to vote, and to vote for even Representatives in Congress, before they have been naturalized. This practice is of doubt-

* Cf., Cooley, Op. Cit., 77-78.
† Constitution of the United States, Art. IV, Sec. 2, cl. 1.

ful constitutionality, and is probably a result of interstate competition for immigrants.

Sojourners or travellers who are subjects of foreign states may have children born in the United States, but as such strangers are not subject to the jurisdiction of this country their children, though born here, would not be entitled to the "privileges and immunities" mentioned above. On the other hand, American citizens travelling or dwelling temporarily abroad may have children born during such sojourn or travel; as, however, the parents are not subject to the jurisdiction of the country in which they happen to be, and have not acquired a domicile there, the children of such parents are American citizens, and, therefore, need not be naturalized. Vattel says that a man's *domicile* is that place from which if he go, he is said to be on a journey and to which if he return, he is said to come home.

Women and Children are Citizens.

From the first section of the Fourteenth Amendment, quoted above, it is clear that, except aliens, both women and children are citizens. The precise number of citizens in the United States is, for reasons which will appear, not easy to ascertain. Turning to the census of 1910, we find that the number of inhabitants is 91,972,266, but of these 13,343,583 are of foreign birth. This reduces the number of natural born citizens to 78,628,683. To this number must be added 3,034,117 persons who were naturalized. These, of course, are mostly males, but there are also many females who have been naturalized; we must add further a part of the 572,421 who have filed their first naturalization papers; also a considerable number of women whose husbands have been naturalized or who have married natural born citizens. Still other corrections are to be made. The number of citizens may be conjectured as exceeding 83,000,000.

In 1910 the number of potential voters was 26,999,151. That is, there were in the States and Territories that number of males who had attained to their twenty-first year. This, however, far exceeds the actual voting strength of the United States. From this number we must first subtract 226,837 such males who were residing in Alaska, Hawaii, the Indian Territory and certain reservations throughout the Union. We must also strike off 1,070,126 males (twenty-one years of age and over) who have not been naturalized and who have not even declared their intention to become American citizens. There are also 797,093 adult males whose precise status in respect to citizenship is unknown. Then, too, there were more than 91,000 persons in the military and naval service of the United States (including civilian employees) stationed abroad and not credited in the census to any state. Still other classes of males who have attained to their twenty-first year must be deducted from the 21,329,819 mentioned above. At the present time many women are voters.

Though the classes of persons excluded from the suffrage are not everywhere the same, there is among the several states considerable uniformity. In different commonwealths the following classes are denied the elective franchise; those convicted of treason, embezzlers of public moneys, duelists, those guilty of bribery, of larceny, of crimes against the elective franchise; also idiots, lunatics, paupers, bigamists, polygamists, Chinese, Indians not taxed, Indians lacking the customs of civilization, persons unable to read the Federal Constitution in the English language, poll-tax delinquents, United States soldiers or mariners. In most states of the Union women also are classed among the disfranchised.

In the Presidential election of 1912 there actually participated 15,036,542 voters. In a word, the number of inhabitants is over 91,000,000, the number of citizens something

over 83,000,000, and the number of electors or voters about 15,000,000. This arithmetical exercise is introduced for the purpose of distinguishing the terms inhabitant, citizen, and voter. As suggested above, absolute accuracy, owing to insufficient statistics, is not claimed for all the foregoing estimates.

It cannot too often be insisted that in the United States all political power resides in the people. A portion of this power they have delegated to the Federal Government, another, and by no means unimportant, part they have conferred upon the various state governments; still other powers they have retained. Among these reserved powers is the right to amend from time to time either the state constitutions or the Federal Constitution, and not only to amend but completely to change them. For the present it is enough that the student remember that the American theory concerning the source of political power is not held in most European countries.

People the Source of Political Power.

No method of examining the Federal Constitution which overlooks the existence of the state constitutions can be regarded as scientific. The pupil should be impressed with the fact that besides the national there are forty-eight other constitutions; that each of these is of very great importance not only to the people of the commonwealth in which it operates but to multitudes beyond its borders. From this he will rightly conclude that his welfare is not completely bound up with the Federal Government, but that in his own state capital and in his own city or county there are governing bodies of very great importance.

State and City Government Very Important.

Fully to recognize and appreciate the sources of the Federal Constitution, the pupil must reflect that before 1787,

when our fundamental law was framed, eleven members of the Union had adopted constitutions of government. In other words, the American people had just completed a valuable apprenticeship in constitution making.* If the instruments of government then made, are analyzed with respect to their principal provisions, one cannot fail to be struck with their general resemblance to the Federal Constitution.

Articles of Confederation and Constitution Contrasted.

In discussing the Constitution occasions will frequently arise when we can examine the more important provisions of the Articles of Confederation and Perpetual Union. That instrument, therefore, need not now be considered. It is indispensable, however, to indicate even in the beginning the fundamental difference between the two frames of government. To say nothing of the different form in which government was constituted by each it is very important to remember the fact that under the Articles all measures of government were directed to states and operated on them as corporations. As seemed best for the interests of the moment a state could either respond or entirely disregard the recommendation of the Continental Congress. In the old system there was, of course, no provision for coercing a state; such an attempt might lead to civil war: under the Constitution there was no necessity for so doing, because measures of government were never directed to states as corporations. The regulations of the Federal Government operated on individuals. If these refused to yield obedience, they could easily and without danger to the state be coerced. In a word, the government under the Articles addressed its

* To illustrate the activity of this era it will be sufficient to observe that as early as 1784 New Hampshire alone had made three constitutions. Notwithstanding the recommendation of the Continental Congress, Connecticut and Rhode Island continued to live on under their colonial charters, the former till 1818, the latter till 1842.

measures to commonwealths, under the Constitution to individuals. This was the fundamental difference between the two systems.

In addition to the terms which have been tentatively defined, many of scarcely less importance have been omitted. Opportunities will occur, however, when these can be noticed. A topic of considerable interest and importance, and one which often finds a place in essays on American constitutional history, is that concerning the various plans of union among the British colonists in North America. These plans were more numerous than is generally believed, but in such a series of studies as is here proposed no more than a very brief account of them can be given. Such a synopsis will form at least a part of the next chapter.

During many of the succeeding chapters the provisions of the Federal Constitution will be discussed in the order in which they occur. In a subsequent stage, however, the related topics will be considered collectively and comparative method frequently employed. In the domain of political science this method will be found not less valuable than in other fields.

CHAPTER II

PLANS OF UNION

ABOUT the time that a committee was appointed by the Continental Congress to prepare a declaration of independence another was chosen to draw up a constitution of government. Both the declaration and the constitution were duly reported by the committees. The first was adopted July 4, 1776. Years passed, however, before the thirteen states ratified the instrument of government. This document, known as *Articles of Confederation and Perpetual Union,* was not adopted by all the states until March, 1781. In another connection its principal defects will be noticed. At present it will be sufficient to observe that it proved even less adequate to meet the requirements of peace than those of war. As a constitution for the new Union the Articles of Confederation failed completely. From one point of view this is the more singular because the American people of that generation had considerable experience in making constitutions. Indeed, more than one hundred years before they had tried their skill in drafting articles of confederation. Of this attempt, as well as of other theories and plans of union at various times proposed, the remaining pages of this and a part of the succeeding chapter will treat.

Articles of Confederation Failed.

Between 1643 and 1776 many plans were suggested for a union of the English colonies in North America. Of these plans this book can give only the merest outline. In point of time the first of the leagues formed was the confederation known as the United Colonies of New England. The date of this compact, 1643, suggests not only the motive which led certain settlements to unite but to some extent indicates the law of progress in political development, that is, necessity.

Early in his reign Charles I and Parliament engaged in some light skirmishing over the Petition of Right. Later the disputes

concerning questions of tonnage and poundage and ship money brought the King and Parliament to an open rupture. On October 23, 1642, their respective armies met at Edgehill. This was the beginning of a terrible civil war which for years engrossed all the attention and all the resources of Cavalier and Roundhead. In scenes of slaughter at home the distant plantations were forgotten. No assistance could be expected from England, and the American settlements were compelled to take measures for their own protection. The Pequods, indeed, had perished, but a generation was yet to pass before the followers of Philip were to be swept from their hunting grounds. Not only was there apprehended some fear of Indian uprisings, but the Dutch, who might become more formidable enemies, were looking with interest toward the Connecticut valley. One of the English plantations, New Haven, was engaged in disputes with the Swedes in what is now the state of Delaware. While the French were at Port Royal and as early as 1608 had established themselves at Quebec, they were too feeble and too remote to excite for the present any great apprehension. This was the condition which, in 1643, led to a union of Massachusetts, Plymouth, Connecticut and New Haven. Not being of the same church fellowship the people of Rhode Island and Providence Plantations were excluded from membership in this confederation.

Earliest Union.

The Articles of Confederation, as the compact between these provinces was called, set forth in the picturesque language of the time the reasons for forming this earliest union.* Though it was designed to last forever, the confederation existed only forty years. There was to be among its members no subordinate league. In each community commissioners were empowered to take a census of all males between the ages of sixteen and sixty years. The burdens, as for instance those of a just war, were to be apportioned according to this census; that is, the most populous province was to bear the heaviest burden. Any advantages resulting from such wars were to be distributed among them on the same basis. In America this was the first attempt at a federal apportionment of public expenses.

* Massachusetts, Plymouth, New Haven, and Connecticut were the members of this early union.

If any member of the confederation was invaded, Massachusetts was to furnish one hundred men, and each of the other provinces forty-five. If the danger was not grave, each community could send fewer soldiers though in the same proportion. There was also a provision by which any plantation was authorized to get assistance from its neighbor. As population increased, the quotas of troops were to be reapportioned. If a community made unjust war, she was herself to bear the charge and was also required to make satisfaction to her invaders.

To manage the affairs of the confederation two commissioners were to be chosen from each of its four members. These delegates, however, had no authority to interfere in those matters that particularly concerned the members of the league. If the eight commissioners were unable to agree on a proposed measure, six of them were empowered to settle it. If, however, six could not concur, the proposition was to be referred for the consideration of the respective general courts or legislatures. The commissioners were to meet once in each year, though they might be convoked in special session. They assembled at Boston, Hartford, New Haven and Plymouth; but there appears to have been a provision by which they met in Boston during two successive years. The compact seems also to have contemplated the choice of a permanent capital which would be "commodious for all jurisdictions." From their own number the commissioners were to choose a president, but he had no veto either absolute or qualified.

In these articles there was likewise a provision for the surrender of fugitives from justice and the delivering up to their masters all runaway servants. Without the consent of at least six commissioners the members of the union could not engage in war. In an extreme emergency four commissioners were authorized to adopt defensive measures, if the others did not attend. An obscure provision appears to hint at the federal consideration of a breach of these Articles, but it does not appear precisely how the delinquent member was to be coerced.

As will hereafter appear, several of the provisions of this first confederation find a place in the Constitution of the United States. What is equally important for the student to remember is that this first union was suggested by necessity and was of native origin.

CHAPTER III

PLANS OF UNION

THE rude constitution for the United Colonies of New England has been noticed in the preceding chapter. The second plan, still more vague in outline, was prepared in England. Immediately after the Restoration, Charles II created a Council of Foreign Plantations. Its commission, dated July 4, 1660, declares it the belief of the King that colonies so considerable, and by him so affectionately regarded, should not longer remain loose and scattered but for their improvement should be brought under uniform regulations. The principle underlying this action was military in character. England was not yet in undisputed control of America, for Wolfe's victory was a century in the future.

Four years later, 1666, a treaty was negotiated and ratified by Maryland, Virginia and Carolina to stop planting tobacco for one year. This league, as recited in the preamble of the agreement, was formed because "the quantity of tobacco made in the country has become so great that all markets have been glutted with it, and the value is so low that the planter is rendered incapable of subsisting." This temporary union, it will be seen, had its origin in the supposed necessities of the planters, and did not, as in the case of so many plans and theories, proceed from military considerations.

In 1677 Maryland invited Virginia to unite with herself and New York in a treaty of peace with the Seneca Indians, and during the course of the year a conference with that tribe was held at Albany. This appears to have been the first meeting of the North and the South to attain a common object.

Meeting of North and South.

Five years later the idea of a confederation was in the mind of Culpeper, of Virginia, and several years afterward one was suggested by Nicholson. To the same period, 1684, belongs the conference with the Five Nations. This was held at Albany under the auspices of Governor Dongan and was attended by representatives from Virginia, Maryland, Massachusetts and New York.

* Horace White, *Money and Banking*, p. 6.

The fall of James II, in 1688, put an end to his purpose to unite under the Crown all the English plantations between the Delaware and the St. Lawrence. In the succeeding reign the massacre of Schenectady (1690) prompted Massachusetts to invite several of the colonies to meet at New York. In April, delegates from three New England plantations met others from New York and by a military treaty agreed to raise 855 men for the better defense of Albany. In this era the motive to form a union was a fear of the enterprise or, as it was termed, the "boldness" of the French.

In 1696-7 William Penn proposed a "briefe and plaine scheam" to make more useful to the crown the English colonies in North America; also to promote their own peace and safety. The proposed congress was to consist of twenty members, "qualified by sense, sobriety and substance," two from each of the existing colonies. The business of the congress was to adjust differences between provinces. The plan mentions several subjects which might occasion controversies between colonies. Chiefly because of its central location, New York was suggested as the place of meeting and its governor as the presiding officer of the congress.

About the same time the Lords of Trade presented to the King a plan for the appointment of a Captain General over all the colonies from New Jersey northward; over several of them he was also to act as civil governor. Like most of the previous schemes this, too, was military in character. Though there was rather general opposition to the recommendations of the Lords of Trade, the King seems to have appointed Richard, Earl of Bellomont, Captain-General and Governor of the province of New York and the American territories depending thereon.

Plans for Colonial Union.

The brief interval of peace between the conclusion in 1697 of King William's War and the beginning of Queen Anne's War, in 1702, produced the plan of D'Avenant, of a Virginian, and of Livingston, the first in 1698 and the last two in 1701. With D'Avenant the welfare and safety of the plantations was the chief consideration. Because of their modernness the criticisms of the Virginian are interesting. He

discusses the allotment of representatives to any general convention, the benefits, social and other, to be deprived from the proposed congress, and states the reasons for his objections to seeing New York derive from the other colonies a considerable revenue and its governor an added dignity. In forms slightly different we still have these questions with us. Livingston's plan would extend over all the colonies on the mainland a single form of government, and for convenience of administration it would arrange them into three groups, *viz.*: Virginia and Maryland were to be annexed to the Carolinas; a part of Connecticut, New York, the Jerseys, Pennsylvania and Newcastle were to form the second division, while the remainder of Connecticut, Massachusetts, New Hampshire and Rhode Island were to constitute the third confederacy.

In 1721 the Earl of Stair outlined a somewhat elaborate scheme for the better government of the West Indies, and during the same year the Lords of Trade in a report to the King suggested for a similar purpose the appointment of a Lord Lieutenant or Captain General, from whom the governors of all colonies should receive their orders in all matters pertaining to His Majesty's service. Neither proposal appears to have been followed by any important consequences.

In the following year, 1722, Daniel Coxe, of New Jersey, likewise recommended the appointment of a Lieutenant or Supreme Governor to whom the governors of all the colonies should be subordinate. A pamphlet published in 1751 by Archibald Kennedy pointed out the importance to British interests of winning and preserving the friendship of the Indians. It also recommended the annual meeting at New York or Albany of a congress to be composed of commissioners from each colony.

Better known, however, than any of these proposals for a union was the Albany Plan of 1754. As early as the preceding year the hostile attitude of the French and their Indian allies was well known both in England and America. This led the Lords of Trade to direct the holding of a conference at Albany with those Indian nations friendly to the British. In that city representatives from New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania and Maryland met on June 19th. As will be seen, Virginia, for reasons of her own, sent no delegates. Franklin had previously published in his *Gazette* "Short Hints Towards a Scheme for Uniting the Northern Colonies." To these he appended the device of a serpent separated into parts, each designating a colony. Over this device was the motto "Join or Die." These hints he afterward developed and submitted to the commissioners at Albany.

The Albany Plan.

This well-known plan proposed a humble application for an act of Parliament by virtue of which one general government might be formed in America. Under it each colony was to retain its constitution except in such particulars as it would be changed by the proposed act. This general government was to be administered by a President General, appointed and supported by the crown, and by a grand Council to be chosen by the colonial assemblies. After the passage of the proposed act the House of Representatives in each assembly should choose members for the Council in the following proportions:

Massachusetts Bay	7
New Hampshire	2
Connecticut	5
Rhode Island	2
New York	4

New Jersey	3
Pennsylvania	6
Maryland	4
Virginia	7
North Carolina	4
South Carolina	4
	48

This distribution of delegates, however, was only temporary, for after the first three years members were to be allotted among the colonies in proportion to their contributions of money to the general treasury. The basis of representation was still property, not men. The number of these delegates, however, could not be less than two nor more than seven. The first meetings were to be held in Philadelphia and subsequently in places agreed upon at the successive meetings of the congress. The Council was to meet annually, and more frequently if an emergency appeared to require it. It could not be dissolved nor continued in session for more than six weeks at a time without its own consent or a special command of the Crown. During their sessions, as well as the journeys to and from the place of meeting, members were to be allowed a compensation of ten shillings sterling per day.

The Grand Council was empowered to make all laws necessary for the regulation of the Indian trade; to raise and pay soldiers as well as to build forts for the defence of any colony, but it could not impress men without the consent of the colony in which they were residents; it could also equip vessels for coast defence and for the protection of trade; until governments were regularly organized the Council was not authorized to make laws for the regulation of new settlements. For these purposes it could lay and collect

taxes, but in collecting such taxes they were rather to discourage luxury than unnecessarily to burden industry. Finally the Council was empowered to appoint a particular treasurer for each colony; also a general treasurer.

As soon after his appointment as he could conveniently do so, the President General was required to convoke the Council. His assent was necessary to the validity of all legislative acts, and it was his duty to execute such measures. He was also vested with power to direct, with the advice of the Council, all Indian treaties concerning the general welfare; also to conclude peace and make war. He could nominate and, with the consent of the Council, appoint all military and naval officers; on the other hand, the nomination of Civil officers was made by the Council and confirmed by the President General. In case of his death the speaker of the Council was to succeed to his duties and powers and to continue till the King's pleasure was made known.

Unless it had been previously appropriated to particular purposes, no money was to be issued except by joint orders of the President General and Council. General accounts were to be settled and reported annually to the several assemblies. Twenty-five members were to constitute a quorum of the Council, but there should be at least one representative from a majority of the colonies.

All laws were to be as nearly as possible in harmony with the laws of England; they were promptly to be transmitted for approbation to the King in council, and if not disapproved within three years after such presentation they were to be in force.

Of the plan of union here briefly outlined Franklin says "the assemblies all thought there was too much prerogative in it, and in England it was thought to have too much of the democratic." Therefore it was promptly rejected by both the colonial assemblies and the Lords of Trade.

From the same time, 1754, there has also come down the rough draft of a scheme for a general confederation. This, like so many others, was almost entirely military in character. A plan in the handwriting of Hutchinson is also in existence. In 1760 Dr. Samuel Johnson, President of King's College (now Columbia University) was considering the subject. Of his essay it is sufficient to say that it was by no means an important contribution to political science.

Stamp Act Congress.

Though the Stamp Act Congress of 1765 prepared no plan of union, its assembling was a most important act of union. An account of the "resolves" of that body belongs to the political history of the United States. The same observation is true of the first Continental Congress (1774). It brought forth no plan for the organization of a confederation; its acts, however, were acts of union. For the consideration of that Congress a plan of union was prepared by the Pennsylvania loyalist, Joseph Galloway. In many of its provisions this scheme was identical with the Albany plan suggested precisely twenty years before. After being considered and sent to a committee this sketch was reconsidered and with all debate upon it was stricken from the records of the Congress.

Articles of Union Proposed.

Notwithstanding the failure of his plan of 1754, Franklin in 1775 offered to the Congress the first sketch of articles of Confederation. With this outline before them it is difficult to understand how the Congress committed so gross a blunder in framing the *Articles of Confederation and Perpetual Union.* These could be amended only by the concurrence of every state, whereas the twelfth article of Franklin's plan empowered Congress to propose and a *majority* of the states to ratify amendments. This sketch of a constitution is further interesting because of its provision for receiving into the Confederation of the United Colonies of North America;

"Ireland, the West India Islands, Quebec, St. Johns, Nova Scotia, Bermudas, and the East and West Floridas." These communities should then be "entitled to all the advantages of our union, mutual assistance and commerce."

Keith's Plan.

In ample histories of our Federal Constitution the preceding plans of union are, with a single exception, more or less carefully described. There was, however, submitted to the Lords of Trade and Plantations by Deputy Governor Sir William Keith, of Pennsylvania, a most interesting communication recommending the formation of a Union for the purpose of extending among the Indian nations the influence and the trade of Great Britain. Though the existence of this communication is not generally known and the assertion is sometimes made that no such suggestion was ever offered, Sir William's manuscript was once in the possession of the writer.

Articles of Confederation Defective.

In another form it was stated in the Introduction that as early as June 12, 1776, a committee of the Continental Congress had been appointed to frame a constitution of government, and that until March 1, 1781, that instrument had not been approved by all the states. The Articles of Confederation and Perpetual Union then adopted, proved unequal to the demands of war and were found even less adequate to meet the requirements of peace. In their preparation all the schemes, theories and plans of union described in the preceding pages antedated the Articles of Confederation, so likewise did several of the state constitutions. With these for guides the deficiencies of the Articles are less excusable.

When, toward the close of 1783, the last British soldiers sailed away from the United States, the embarrassments of the new union were by no means at an end. Indeed, the continued presence in the country of an enemy served in some sort as a bond of union. It was only when the last armed foe had departed from the scenes of recent war that patriots began carefully to consider the situation of the infant republic. Whether that was examined from within or from without the prospect was far from encouraging. In the latter view the patriot beheld the possessions of Spain separating him from the Mexican Gulf and beyond the Mississippi stretching away to the distant Pacific. He knew also that a large debt was due to France and that the revenue of the Confederation was not sufficient to pay even the interest on those timely and generous loans. Still more serious was the occupation by British garrisons of various frontier posts such as Mackinaw, Detroit and Niagara. Hastily examined these were the most conspicuous objects in the world outside. At home the situation was even more gloomy. An account of the domestic troubles of that critical period belongs to the political history of the United States. In these studies the subject can be only briefly noticed.

Dangers to Union.

Long before the commencement of the Revolution, Benning Wentworth, an enterprising governor of New Hampshire, encouraged the people of his province to take up the unoccupied lands beyond the Connecticut River. Massachusetts and Connecticut, too, furnished pioneers for that region. With these states no serious controversy ever arose. New York, however, was more tenacious of what she regarded as her rights in the district and endeavored to assert her authority over it. At the commencement of the Revolution this controversy concerning the title to what was

New York and New Hampshire.

then known as the New Hampshire Grants was beginning to assume the appearance of a civil war. Constables from Albany were mobbed and the militia defied. Indeed, when the struggle for American independence began, the leading men of that district, Ethan Allen among them, were by the New York authorities regarded as outlaws. The dispute sank to rest with the outbreak of the war, but when independence was achieved the quarrel was renewed.

New York and Connecticut.

With the State of Connecticut, New York had another kind of controversy. When the citizens of that commonwealth attempted to sell their productions in New York City, the authorities sought to tax them for the privilege. Not a cart-load of firewood could be delivered at the back-door of any residence until there had first been paid a heavy duty. Sloops from Connecticut were required to pay fees at the custom house as was done by vessels from Liverpool or Amsterdam. This attempt to embarrass their trade was resented by the people of Connecticut. At a great meeting of business men held at New London it was unanimously agreed to suspend all commercial intercourse with New York. Under a forfeiture of $250 for failure to keep his promise each merchant pledged himself not to send for a period of one year any goods into New York. In that era such meetings usually heralded war.

New Jersey and New York.

With its population of 30,000 New York appeared to the farmers of New Jersey to be both a convenient and profitable market. They had long been supplying the city with butter, cheese, poultry and garden vegetables. Like the farmers from Connecticut they, too, were taxed by the policy of New York. Their legislature, however, was in a situation to retaliate. The merchants of that city had recently erected on Sandy Hook a light-house for the benefits

of their commerce. By way of retaliation the legislature of New Jersey promptly imposed upon it a tax of $1,800 per year.

Connecticut and Pennsylvania.

Far more serious, however, than these commercial differences was a dispute between Pennsylvania and Connecticut for the possession of the Wyoming valley. By a judicial decision of 1782 this territory was awarded to Pennsylvania. In the decree of the Federal court the government of Connecticut seems gracefully to have acquiesced. This region, "fair Wyoming," had been the scene of the massacre of 1778. It was just beginning to recover from that blow, when in the spring of 1784, owing to a sudden and unusual rise in the Susquehanna, drifting ice and swollen waters carried death and destruction throughout that unfortunate region. "Houses, barns, and fences were swept away, the cattle were drowned, the fruit trees broken down, the stores of food destroyed, and over the whole valley there lay a stratum of gravel and pebbles."* The wretched people were perishing of cold and hunger. In these circumstances President Dickinson urged the legislature of Pennsylvania to send relief. That body was not only deaf to the Governor's humane appeal but appears to have looked upon the disaster as a visitation of Providence. The hated Yankees should have stayed in Connecticut where they belonged. The Lord had merely punished their trespasses. Partly by the neglect and partly by the connivance of the Legislature these unhappy people were proceeded against with extreme severity. The Pennsylvania commander, a creature named Patterson, "attacked the settlement, turned some five hundred people out of doors, and burned their houses to the ground. The wretched victims, many of them tender women, or infirm old men, or little children, were

* John Fiske, *The Critical Period of American History*, p. 148.

driven into the wilderness at the point of the bayonet, and told to find their way to Connecticut without further delay. Heartrending scenes ensued. Many died of exhaustion or furnished food for wolves."*

Patterson had done his work more thoroughly than either the land speculators or the lawmakers of Pennsylvania expected. Colonel Armstrong was thereupon ordered into the country. He promised the wretched people that if they would lay down their arms, he would protect them. On this assurance they surrendered their weapons. To the number of seventy-six they were immediately marched off as prisoners and lodged in the jails at Easton and elsewhere.

In New England the tidings of such deeds aroused the greatest indignation. This incident shows very exactly the notions of interstate comity which prevailed in the years immediately succeeding the Revolution.

Confusion in Rhode Island.

The paper money craze was producing in Rhode Island almost every sort of mischief. Except the business of the bar-rooms, trade of all kinds was at a standstill in Providence and Newport during the year 1786. Mobs attempted to storm provision stores. For refusing to bring their produce to the cities, farmers were threatened with violence. Wealthy merchants threatened to leave the State, which was everywhere reviled and which then acquired the name Rogues' Island.

Shay's Rebellion.

The defeat of rag money in Massachusetts hastened the insurrection under Shays. At Great Barrington, Northampton and Worcester the courts were broken up by angry mobs. A large army was required to disperse the great body of insurgents, and by January, 1787, it was to a great extent accomplished. The expense of equipping the force under Gen-

* Ibid., p. 149.

eral Lincoln was borne not by the commonwealth but by some wealthy merchant of Boston. The State treasury was practically empty. Though not of so grave a character, there were numerous disturbances in other parts of the union.

Maryland and Virginia.

More interesting, because of its consequences, was the question between Maryland and Virginia of navigating the Potomac. Early in 1785 commissioners met at Washington's house at Mount Vernon. Before separating they agreed to recommend to the legislatures of their respective states the calling of a convention to meet at Annapolis in the following year. Maryland invited her neighbors, but Virginia issued an invitation to all the states. However, only five, New York, New Jersey, Pennsylvania, Delaware and Virginia, attended. Though Maryland had moved in the matter, she was not represented at the Annapolis convention. With the proceedings of that meeting this chapter is no further concerned than to observe that because of the partial attendance of the commonwealths it was concluded to attempt nothing more than the preparation of an appeal to all the members of the Union to send delegates to a convention to meet in the following May at Philadelphia. With this brief sketch of the anarchic tendencies following the acknowledgment of American independence it will be easier to comprehend the task and the achievement of the constitutional convention of 1787.

CHAPTER IV

THE CONSTITUTIONAL CONVENTION

THE closing paragraphs of the preceding section suggest, and American political history demonstrates, that by the year 1786 the infant republic had begun to drift rapidly toward anarchy. This unmistakable tendency was perceived by the commissioners who met at Mount Vernon in 1785, and in the following year was still more keenly felt by the delegates who composed the Annapolis convention. Except a few demagogues here and there no one denied the existence of these alarming symptoms. If the physicians of the state were to prescribe a remedy, it was necessary that they act quickly.

Constitutional Convention.

The Constitutional Convention did not meet an hour too soon. Before the second Monday of May, 1787, delegates began to arrive in Philadelphia. With representatives in attendance from nine states, the Convention was called to order on the 25th of that month. It closed its sessions on September 17th following. Of the seventy delegates appointed but fifty-five consented to serve, and of these only thirty-nine signed the finished draft of the proposed constitution.

Before entering upon a summary of the work of the Convention it may be necessary to make a few general statements concerning its members. Of the fifty-five delegates some, like Washington, its president, Franklin and Roger Sherman, had arrived at maturity of years and judgment. Because of their legislative, administrative or other experience they would be inclined to put upon their powers as delegates an enlarged construction. The events of the Seven Years' War were familiar to them all, and even King George's War had not yet become a dim tradition. To men of this type should be ascribed the principal share in the work achieved. To this class

belonged Hamilton, a much younger man, who seems to have had an intuitive grasp of political problems; also Madison, a diligent and thoughtful student of history and government, and James Wilson, a profound thinker on constitutional questions. Belonging in part to the same class were: General Charles C. Pinckney, Rufus King, Nathanael Gorham, Oliver Ellsworth, Governor Edmund Randolph, of Virginia, and John Rutledge.

Foreign-born Delegates.

A fact which had some permanent influence on the work of the Convention was the presence in it of several eminent members of foreign birth. Alexander Hamilton, by many regarded as the most remarkable man in the Convention, was born in the island of Nevis in the West Indies. Robert Morris was a native of Lancashire, England. McHenry, Butler, and, according to some accounts, William Paterson were of Irish birth.* James Wilson, a native of Scotland, was one of the ablest lawyers of the Convention. These delegates could sever more easily than natives the ties which bound them to their States, and therefore could more easily consider conditions beyond the borders of their own commonwealths. The influence which they had upon the Constitution in any special sense, however, was probably confined to its generous treatment of foreign-born citizens in the matter of holding office.

Plans Before Convention.

As stated above, George Washington, the most distinguished and one of the wealthiest men in America, was chosen president of the Convention. At one time or another twelve states were represented, Rhode Island alone sending no delegates. Considerations of space will not permit an examination of the various plans submitted to the Convention. Of these the principal were: The Virginia plan, the New Jersey plan, presented by Paterson, the plan of Charles Pinckney and that of Hamilton.

* Patterson was born at sea.

About June 19th these different schemes of government were submitted to a committee. That offered by Virginia became the basis upon which the Convention continued to work. An account of the successive steps in the formation of the Constitution is of the greatest interest, but that can be examined at length in Madison's Journal of the Debates in the Constitutional Convention. From time to time the more important compromises will be noted. For the present it is sufficient to say that the Virginia plan was generally supported by the large states; the New Jersey plan was more acceptable to the small states. This, however, was no more than a revision of the Articles of Confederation, and against that system there existed a fatal objection. *It had failed.*

Virginia Plan Discussed.

As is well known the American people generally did not expect a new constitution of government. What they did expect may be seen by an examination of the credentials of the delegates from various states. In the records of the New York Assembly appears the following: "*Resolved*, that the Hon. Robert Yates, John Lansing, Jun., and Alexander Hamilton, Esqrs., be, and they are hereby declared duly nominated and appointed delegates, on the part of this state, to meet such delegates as may be appointed on the part of the other states, respectively, on the second Monday in May next, at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress, and to the several legislatures, such alterations and provisions therein as shall, when agreed to in Congress, and confirmed by the several states, render the Federal Constitution adequate to the exigencies of government and the preservation of the union."

An examination of the credentials of the delegates shows on the part of the states no purpose to make a new constitution.* The credentials mention revision, alteration and amendment, and it was of amending not superseding the Articles of Confederation that the people were thinking. It was soon apparent, however, that this system was so defective that revision was impossible. It was at this stage of the work that the smaller minds in the Convention showed a strong inclination to obey to the letter the instructions of their respective states. Neither Lansing nor Yates dared disobey the directions of their Assembly, and they left the Convention without signing the Constitution. Hamilton, however, though his credentials were identical, put a broader construction on his powers as a delegate and signed the new instrument of government. What happened in the case of the representatives from New York also occurred among the commissioners from other states.

What the People Wanted.

When Governor Randolph on behalf of the Virginia delegates submitted his sixteen propositions for the deliberations of the Convention, it was evident that a departure from the existing system was contemplated by the representatives of the most influential state. His resolutions that there should be established a national legislature, a national executive and a national judiciary foreshadowed the intention of the Virginians. The idea of a national government includes the notions of a body politic, of sovereignty and of allegiance.

The National Idea.

* Centz, *The Republic of Republics*, pp. 516-528.

The Virginia plan provided for a national legislature of two branches; for a national executive to be chosen by the national legislature and to be ineligible a second time; also for a national judiciary to consist of one or more supreme tribunals and of inferior tribunals. In the national legislature the states were to be represented according to their importance; that is, in proportion to either their wealth or population. Under the Articles of Confederation each state was entitled to one vote on every measure before the Congress; in other words, there was among members of the existing union perfect equality. It was natural that the commonwealths of small population would oppose any departure from that rule of representation. Under the proposed system the Delaware commissioners saw a provision for inequality, and they prepared to withdraw at once from the Convention. Their action recommended in future greater caution in the proceedings, and for a time the matter was postponed. When, however, this delicate topic was reconsidered, a compromise was agreed to. By its provisions the states were to be equally represented in one branch of Congress, and in the other to be represented in proportion to population. Up to June 13 the debate upon the Virginia plan continued. Soon after, the small states presented the Paterson or New Jersey plan.

Large States and Small States.

Compromise.

As already stated, the New Jersey plan was little more than a revision of the existing Articles. It provided for authority to compel contributions to the general treasury; also for the supremacy of the new plan. It contained several provisions which were afterward embodied in the Con-

New Jersey Plan.

stitution. In a remarkable speech Madison analyzed the New Jersey plan and exposed its defects. These were further elaborated by Hamilton, who submitted a scheme of his own. Probably his plan contained more of the important ideas that finally found a place in the Constitution than did any one of the other drafts proposed.

The Hamilton Plan.

Despatch, energy and *responsibility* being the qualifications desired in an executive it was soon agreed to vest the executive power in a single magistrate. If this power was vested, for instance, in a board, there would be a lack of energy as well as despatch, and responsibility could not be fixed. It was at first agreed that the President would be chosen by Congress. To that method there were offered many objections; not the least of these was the fear that the President and the Congress would be constantly exchanging promises and votes.

A Single Executive.

In constituting or making up the legislative branch the principle of proportional representation appeared conspicuous. A deadlock was about to result when a committee was appointed to seek a compromise. About July 2 the Convention adjourned to await its report. Of this committee the venerable Franklin was a member, and to him is usually ascribed the honor of having persuaded the large States somewhat to abate their demands. This they agreed to do by giving the small States equal representation in the Senate. The latter, on the other hand, consented to give the large States in the House of Representatives members in proportion to their population; also the exclusive right to originate revenue measures, that is, money bills. This arrangement gave in matters of taxation the principal share to the immediate representatives of the people. In other

A Compromise.

words, the large States would control to a great extent all questions of revenue.

When the Convention met, the functions of the judiciary were fairly familiar to the people of all the States. An important step was taken when it was resolved that its jurisdiction should extend to all matters which affected internal or external harmony. The tenure of good behavior for the judges of the United States Courts was, probably, borrowed from England, where, about the time of William of Orange, it was enacted that judges might continue to hold their offices after the demise of the Crown: formerly a new sovereign appointed new judges. This subject may be summarized by saying that those provisions of the British system adapted to America were retained by the Convention. Those parts not in harmony with American notions were discarded.

The Term of Good Behavior.

When the Convention had agreed upon a single executive, a legislature of two branches and a judiciary satisfactory to the delegates, its work was by no means at an end. They were still to determine whether slaves were persons or chattels; also to settle the question of their importation. It was necessary to agree upon the basis of representation in the most numerous branch of Congress; likewise upon the extent of congressional power over the subject of commerce. For the admission of new states provision was yet to be made. Indeed, many details were still to be considered. Having completed its work, the Convention adjourned on the 17th of September, 1787.

Convention Adjourns.

Opposition to the proposed instrument of government

actually began in the convention. Lansing and Yates, delegates from New York, refused to sign the new Constitution; Gerry, of Massachusetts, did likewise. Luther Martin, of Maryland, and Randolph, of Virginia, witheld their signatures. George Mason was grieved to find in the instrument no bill of rights. This objection gave the keynote to the opponents of the Constitution.

Constitution Opposed.

Soon after the adjournment of the Convention, the Constitution was laid before the Continental Congress, then in session in New York. In this body, Richard Henry Lee proposed that it be amended before it was submitted to the States. This would undo all that had been so painfully accomplished.

In the Philadelphia Convention, James Madison had taken a leading part. During all that eventful summer he was never for more than a fraction of an hour absent from the debates. He took careful notes, and more than any member present knew the history of every provision and quite as well as any understood the spirit of the entire instrument. When, therefore, Mr. Lee opposed the Constitution, on its submission to Congress, it was fortunate for the future welfare of the new republic that Madison also had a seat in Congress. Like Lee himself Madison was a Virginian. His knowledge, his patriotism and his eloquence assisted greatly in speeding the new plan of government on its way. Despite every sort of opposition, the Constitution was sent forth for the ratification of the States.

Service of Madison.

As "The Federal Farmer," Richard Henry Lee employed

his ready pen to prevent adoption, and in the Virginia ratifying convention took advantage of his popular eloquence and endeavored to defeat it. Besides Virginia, however, there were other important centres of opposition. In Massachusetts, leaders as influential as Samuel Adams and Elbridge Gerry were in the ranks of the opposition, but the former was finally persuaded to surrender some of his views. Despite the able arguments of James Iredell, North Carolina rejected the Constitution.

Centres of Opposition.

Notwithstanding the combined opposition of Patrick Henry, of Mason, of Grayson and Richard Henry Lee, the Virginia convention, by a slender majority, adopted the new Constitution. These leaders were ably supported by characters not now so well remembered but they were more ably opposed by Madison, Marshall, Randolph (now in favor), Pendleton and outside the convention by the great influence of Washington.

Adoption by Virginia.

It was in New York, however, that the opposition was best organized and, because of the "auxiliary interests" of Governor Clinton, most likely to succeed. Chancellor Livingston and John Jay ably supported the few friends of the new plan who had been chosen to attend the Poughkeepsie convention, but it was on the broad shoulders of Hamilton that the principal part of the burden rested. In a wonderful speech, which lasted during a considerable part of an entire day, he defended the proposed system and won over to his side the leader of the opposition, together with many followers. When the vote was counted, it was found that thirty favored and twenty-seven opposed adoption. Tried by the test of winning votes few speeches in American history have been so effective as that of Hamilton.

New York Adopts.

It was not, however, his splendid services in the New York Convention that won for Alexander Hamilton the distinction of being the ablest advocate of the Constitution. Scarcely inferior in value to this achievement were his contributions to *The Federalist*. This was a collection of eighty-five letters prepared by Hamilton, Madison and Jay and printed chiefly in the *Independent Journal* and *The Packet*, both of New York City. These essays were projected by Hamilton. Of the entire number five were written by John Jay. From his acquaintance with foreign relations he was chosen to discuss the value of union considered with reference to external affairs, and to discuss the Senate, which was to ratify treaties and confirm diplomatic nominations. An injury at the hands of a mob compelled Jay to retire early from the work. The republican character of the new Constitution, and its harmony with existing institutions were among the topics to be treated by Madison, who had long reflected on these subjects and who was then in New York as a member of Congress from Virginia. As to the number of essays contributed by Madison there is some difference of opinion. A book revised by himself in 1819 states the number of his essays at twenty-nine. This, the highest estimate, would leave to Hamilton fifty-one, and they cover a boundless field. It would seem that a few were written by Hamilton and Madison jointly. Some authorities credit Hamilton with many more. They appeared between October, 1787, and March, 1788, and were soon published in book form under the title *The Federalist*. In both forms the essays were widely read, and there is no doubt that they had considerable influence in securing the adoption of the Constitution. If they did not influence or reach the people, they at least furnished to popular leaders unanswerable arguments.

The Federalist.

The small States and the commonwealth of Pennsylvania promptly adopted the Constitution. To a great extent their opposition was withdrawn after they were given equal representation in the Senate. Rhode Island called no ratifying convention, and, as stated above, North Carolina rejected the proposed system. The instrument went into operation in June, 1788, when it had been ratified by the ninth state. Many of the succeeding chapters will be devoted to an explanation of the Constitution thus prepared.

Constitution Becomes Binding.

CHAPTER V

THE PREAMBLE

THE Constitution of the United States may be roughly divided into five principal parts, *viz.*: the Preamble, the Frame of Government, the Schedule, the Bill of Rights, and the Civil War Amendments. Under these subdivisions it will be briefly examined. Constitutions, general laws, contracts and other legal instruments have preambles; these set forth the purposes for which such instruments are designed. The preamble or clause which introduces the Constitution of the United States reads as follows:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America."

The Preamble.

For several reasons this preamble is worthy of the most careful consideration. In the first place, it contains a concise and rather comprehensive statement of the objects of government, *viz.*: to establish justice, to insure domestic tranquillity, to provide for the common defence, to promote the general welfare and to secure the blessings of liberty. It states also by what authority the Constitution was made. Examined grammatically the main thought is, "We, the people of the United States . . . do ordain and establish this Constitution for the United States of America." It is not from rules of grammar, however, that we can arrive at the precise significance of this sentence.

The Constitution, indeed, was made by the people of the United States, but it was by the people acting through state governments. It was not made by the immediate representatives of the people, for these were found in the legislatures and other departments of the several state governments. The people of each state elected members to their respective assemblies. It was by these bodies that delegates were appointed to attend the Constitutional Convention. In other words, the framers of the Constitution were chosen only indirectly by the people. Their credentials were received not from conventions but from legislative bodies previously existing and which were created for very different purposes. When, however, the delegates thus appointed had prepared a draft of a constitution it was not binding upon any state or even upon any individual. It still lacked approval, and this approval was given not by the respective legislatures but by conventions chosen by the people. In this sense only was the Constitution ordained and established by the people of the United States, and it must be remembered that in ratifying it they acted by states, each giving independently its approval.

Meaning of We, the People.

Early Draft of Preamble.

One of the earlier drafts of the preamble read: "We, the people of the States of New Hampshire, Massachusetts, Providence and Rhode Island Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia do ordain, declare and establish the following constitution for the government of ourselves and posterity."

Present Form of Preamble.

In a later stage of its proceedings the Convention decided that the Constitution would become binding when approved by nine states. That is, the more perfect union would be entered into even if four commonwealths refused to join. As it could not be foreseen by the Convention which nine states would accede to the new union, the delegates were compelled to change the language of the preamble to its present form.

Constitution of the Confederate States.

In this connection it may be interesting as well as instructive to compare the preamble of our Federal Constitution with the preamble of the Confederate Constitution adopted in 1861. The latter reads: "We, the people of the Confederate States of America, each state acting in its sovereign and independent character, etc." From this brief historical inquiry it seems clear that in after times the opponents of State Rights sometimes made an unfair use of the language "We, the people of the United States," but for this there was some excuse. Even before the general adoption of the Constitution, Patrick Henry, in the Virginia ratifying convention, demanded by what authority the delegates used the language "we, the people of the United States." The eloquent Virginian feared that the phrase implied a fundamental change in the nature of the government. He believed that for the existing confederation there was a purpose to substitute a national government.

Fears of Henry.

On the other hand, the language of the preamble seems

carefully to exclude the notion that the states were about to form a temporary league. One of the objects of the Constitution was to form a more perfect union. But the constitution of the existing union was entitled "Articles of Confederation and Perpetual Union." In other words, the delegates recommended a more perfect union than a perpetual one. It is difficult to perceive how language could more clearly describe the irrevocable nature of the compact about to be formed by the states. To enter the new confederation no coercion was employed. Once the commonwealths had entered, however, there was no method provided by the Constitution for retracing their steps. In this view secession was a remedy outside the Constitution. Whether there was sufficient justification for resorting to such a remedy is a subject that more nearly concerns the political than the constitutional history of the United States.

Union Perpetual.

Because of what has been said in the preceding chapters the remaining clauses of the preamble do not require any particular discussion. The establishment of justice is assigned as one of the reasons for forming a new instrument of government. From this, however, it should not be inferred that there were no national courts. Under the Articles of Confederation causes were tried and decisions were rendered by the existing tribunals, but as there was no power to enforce such decrees, justice could not be said to have been established. The necessity for insuring domestic tranquillity will be sufficiently apparent if we recall what was said on pages 63-69 of chapter III. The other clauses of the preamble appear to be self-explanatory. For the present it does not seem necessary to make any further observations on the first part of the Constitution—THE PREAMBLE.

Justice not Established Before Constitution.

The second subdivision requires a more detailed examination. The FRAME OF GOVERNMENT consists of three parts, *viz.*: a national legislature, a national executive, and a national judiciary. These will be considered in the order mentioned.

Congress Bi-cameral.

The national legislature, or the Congress, consists of two branches, a Senate and a House of Representatives. In the former the states are equally represented; in the latter they are represented in proportion to population. The Congress consists of two houses because in 1787 all the states, except Georgia, Pennsylvania and the district of Vermont, had lawmaking bodies of two chambers; that is, the legislatures were *bi-cameral*. Furthermore, the British Parliament was, and it still is, composed of two houses. In a word, the lawmaking bodies familiar to the American people were generally made up of two houses.

A Guiding Principle.

The purpose of the Convention was not to surprise the people by proposing novelties for their acceptance but to make a new Constitution out of familiar materials. Indeed, this was a guiding principle with the framers of our Constitution. Thus in selecting a name for the new lawmaking body they adopted a familiar one; that is, they called it a Congress. Under the Articles of Confederation there was a Congress of one branch, and though in the end that system failed completely, the American people still regarded it with considerable affection. The Continental Congress had at least guided them to independence, and that was no ordinary achievement. In a word, the people were familiar with the name Congress, and they believed that it had some claims on their gratitude.

Article I treats of the lawmaking body of the nation, article II is concerned with the national executive, and

article III with the national judiciary. In other words, the first article explains the constitution of Congress, the second that of the Executive or President, and the third that of the United States Courts.

ARTICLE I says that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." That is, no laws can be made by either the executive or the judicial department. Congress alone can legislate for the nation. Why this body consists of two houses has in part been explained. In another connection will be discussed the advantages of having two houses. Each will now be examined in turn.

The Sole Lawmaker.

THE HOUSE OF REPRESENTATIVES is composed of members chosen every second year by the people of the several states. Every person is entitled to vote for Representatives in Congress who is qualified to vote for members of the lower house of his own state legislature. At present the House of Representatives is composed of 432 members. These are allotted among the states in proportion to population. Nevada, for example, has one member while New York has forty-three, because the number of its inhabitants is thirty-seven times as great. For the purpose of apportioning Representatives the entire population of a state is now considered, except Indians who are not taxed.

Who Can Vote for Representatives.

Before the adoption, July 28, 1868, of the Fourteenth Amendment the population of each state, for the purpose of determining its representation in Congress, was ascertained as follows: all free persons were counted; also three fifths of the slaves and all the Indians who were taxed. Therefore all untaxed Indians and two fifths of the whole number of slaves were not counted in estimating

the Federal population. From this arrangement it is clear that before 1868 a Northern State equal in population to a Southern State would have in the House a larger representation, because it had few or no slaves. If, however, a direct tax were levied upon two such states the Northern would pay a greater share because of its greater representation in Congress. But in practice direct taxes were seldom imposed. As there are no longer any slaves, the three fifths provision is, of course, not now in force.

The Census.

In the Constitution provision was made for the taking of a census within three years after the first meeting of the new Congress. The first Federal enumeration of inhabitants was made in 1790, and, as the Constitution requires, a Federal census has been taken every ten years since. It was necessary, however, to apportion members among the states before the completion of the first census. These were allotted in proportion to the quotas of troops and the contributions of money furnished by the states during the Revolutionary War. On this basis sixty-five members were apportioned among the thirteen states. The Constitution, Art. I, Sec. 2, fixes the number to which each commonwealth was then entitled. From an examination of these numbers it will be seen that New York was given only six, whereas Virginia was allotted ten representatives. The student will find other evidences to show that since 1787 the relative importance of the states has greatly changed.

Qualifications.

A Representative in Congress must have attained to his twenty-fifth year. At the time of his election he must have been at least seven years a citizen of the United States and an inhabitant of the state from which he is chosen. Any Representative may die, resign, or be expelled from the House. To fill vacancies thus occasioned the Governor of the state in

whose representation the vacancy occurs, may call a special election to fill the unexpired term. Under no circumstances whatever can either the Governor or the Legislature of a state fill any vacancy in the House of Representatives. In the case of United States Senators, as we shall see, it is different. Many powers exercised by the House are also vested in the Senate. There are, however, some powers pertaining to the House which are not shared by the Senate. For instance, the Senate cannot propose any bill for raising revenue, as, for example, a tariff measure; that must originate in the House. This body has also the sole power of impeachment. With us this word means no more than the accusation and arraignment of a high civil official before some constituted tribunal. The Senate can never impeach or accuse, though it is the only tribunal which can try impeachments. On the other hand, the Senate has powers which are not possessed by the House. These will presently be mentioned. The student should remember that the House of Representatives is never anything except a lawmaking body. In this branch of Congress members are apportioned among the states in proportion to population, not according to their respective areas or their differing degress of wealth. The House has no officers imposed upon it by the Constitution. The members elect their Speaker and other officers.

Filling Vacancies.

House a Law-making Body.

In the constitution of the Senate, where each state has two members, we see the *confederate* character of the union. In the House, where population determines the number of representatives, we see not less clearly the *national* principle. In the Continental Congress each state might be represented by from two to seven members, but whatever the number of delegates each state had

Two-fold Nature of Union.

but one vote. There the voting was always by states. Under the Constitution each Senator has one vote. Senators are chosen by the voters of the respective commonwealths. Vacancies may occur in the same manner as in the House, but they are not filled in the same way. The Governor of the state in which the vacancy happens is empowered to issue writs of election to fill such vacancies. The legislature of any state may empower the executive thereof to make temporary appointments. Thus it will be noticed that in a certain contingency the Governor of a state can appoint temporarily a United States Senator. As stated above, he can under no circumstances fill a vacancy in his state's representation in the House.*

Qualifications.

A Senator in Congress must have attained to his thirtieth year; he must have been for at least nine years a citizen of the United States, and when elected be an inhabitant of the state from which he is chosen. Except its presiding officer the Senate is empowered to choose all its officers. By the Constitution this office is assigned to the Vice-President of the United States. Unless the Senators are equally divided he can vote on no question. The reason for this is clear. If he could vote, the state from which he comes would have three votes in the Senate. That would introduce a slight inequality in the political power of the states in that branch of Congress. In the absence of the Vice-President, or when he is exercising the office of President of the United States, the Senate is empowered to choose a president *pro tempore*. Being always a Senator from some state this officer, if he desires, can vote on any question. If he could not vote, his state would not enjoy its equal representation in the United States Senate.

* See Amendment XVII of the Constitution, p. 233.

At first the United States Senate consisted of twenty members. These were divided into three groups or classes, *viz.*: first, second, and third. Those in the first class served two, those in the second four, and those in the third six years. Their terms would then expire as follows:

Classes of Senators.

1st Class..... $1789 + 2 = 1791$
2d Class..... $1789 + 4 = 1793$
3d Class..... $1789 + 6 = 1795$

The Senators chosen in 1791 to fill the places of those in the first class served till 1797; those elected to supersede the second class served till 1799, and those appointed to fill the places of Senators in the third class served till 1801. In other words, after the first arrangement Senators were elected for a term of six years. Nevertheless, as the terms of each group begin at intervals of two years, one third of the United States Senate changes every two years. This results in some evident advantages. By adopting this method there will always be found in the Senate men experienced in lawmaking and fairly familiar with affairs both domestic and foreign. This tends to make the United States Senate, what indeed it is, an efficient parliamentary body. It likewise possesses the advantage of always containing members who have recently come from the people, and who are therefore in sympathy with them.

Senate Changes.

Unlike the House, which is always a lawmaking body, the Senate exercises three kinds of functions, *viz.*: in connection with the House it prepares laws; it also tries impeachments. Furthermore, it ratifies treaties with foreign powers and confirms Presidential nominations to office. In other words, it performs legislative, judicial and executive functions. These functions affect somewhat the qualifications of Senators. As, for instance, the matter of citizenship.

Mixed Character of Senate.

The Senate shall have the sole power to try all impeachments. From this provision of the Constitution its framers expected much. In practice, however, it has proved rather unsatisfactory. "The President, Vice-President, and all civil officers of the United States" may be impeached for treason, bribery, or other high crimes and misdemeanors. When the Senate sits for the purpose of trying an impeachment, the members are on oath or affirmation. The Chief Justice of the United States Supreme Court presides when the President is on trial. "No person shall be convicted without the concurrence of two-thirds of the members present." The next chapter will be introduced by a brief account of the principal officials who have been impeached.

Judicial Function of Senate.

CHAPTER VI

THE FRAME OF GOVERNMENT

(*Continued*)

In the United States the impeachment of a public officer is designed not so much for the purpose of punishment as for the prevention of further wrong-doing. This provision of the Constitution, as already stated, has not worked so efficiently as its authors appear to have hoped, for in the entire course of American history only four civil officers have been convicted by this process.

American Idea of Impeachment.

In the Colonial era it was never invoked because the chief executive officers were responsible not to their respective assemblies but to British sovereigns. The State constitutions made before 1787 borrowed it from England, where impeachment was employed for the purpose of removing from office a minister who had made himself obnoxious to Parliament. At that time its object was primarily to punish. Not having been invoked since 1806, the process has become obsolete in England.

Early in the national period of our history William Blount, a United States Senator from Tennessee, engaged in a conspiracy to invade New Orleans and the adjacent territory with a land force to be supplied by himself and the assistance of a British fleet and attempt to wrest the entire region from Spain, a power with which the United States was then at peace. Furthermore, the French and Spaniards in that vicinity had given during the Revolutionary war many proofs of their friendship for America. Blount was impeached by the House of Representatives, and in December, 1798, the Senate resolved itself into a court for his trial.

A Senator is Not a "Civil Officer."

The case was dismissed, however, on the ground that a Senator is not "a civil officer" liable to impeachment. Precisely who are civil officers in the meaning of the Constitution is nowhere stated, but the officers impeached have been Judges of Federal courts, a President and a cabinet officer.

In March, 1803, the House impeached John Pickering, of New Hampshire, Judge of a United States District Court. The articles of impeachment charged him with having made decisions contrary to law; also with drunkenness and profanity on the bench. By a party vote he was convicted by the Senate and removed from his judgeship. He was not, however, disqualified for holding office under the United States.

Judge Pickering Removed.

Samuel Chase, a Justice of the United States Supreme Court, was impeached in 1804 for including in his charges to grand juries bitter observations on party politics; also for arbitrary and unjust conduct in the trials of Fries and Callender. On the eight accusations charged against him he was pronounced not guilty.

Samuel Chase Not Convicted.

Again in December, 1830, Judge Peck, of the Federal District Court of Missouri, was tried on an impeachment charging him with arbitrary conduct in punishing an attorney who had criticised one of his opinions. Failing the two-thirds majority, Judge Peck was acquitted. In 1862 Judge Humphreys, of Tennessee, was impeached for accepting an office under the Confederate States and was unanimously convicted.

Judge Peck Not Convicted.

Humphreys Impeached.

More important than any of these was the impeachment of President Johnson. On March 5, 1868, on behalf of the House of Representatives, managers appeared in the

Senate, Chief Justice Chase being in the chair. Eleven charges were preferred against the President; of these the most important was his alleged violation of the Tenure of Office Act, a law passed in March, 1867. He had dismissed from his cabinet Edwin M. Stanton, Secretary of War. After a trial lasting eighty-two days the Senate on May 16 came to a vote. Fifty-four Senators were present; hence by the constitutional provision it would require the concurrence of thirty-six to convict. The result showed thirty-five in favor of conviction and nineteen in favor of acquittal. One more vote for conviction would have removed President Johnson from his high office.

President Johnson Not Convicted.

Again in 1876 for lack of one vote William W. Belknap, Secretary of War, escaped conviction on impeachment for bribery. A later resort to this process was in 1905, when Judge Swayne, of Florida, was impeached. He, too, was acquitted.

Secretary Belknap Not Convicted.

Though the President can pardon all offenses against the United States, cases of impeachment are expressly excepted. From the decision of the Senate, therefore, there is no appeal. On conviction the civil officer may be removed and disqualified for service under the United States. He may thereafter be tried in an ordinary court for crimes defined in the law.

Two Punishments May be Inflicted.

"The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

At this point it may be observed that Senators were formerly elected at the capitals of their respective States. Clearly it would not have been prudent for the States to permit Congress to deter-

mine where their Legislature should meet. By virtue of the provision quoted, each commonwealth continued for many years after the organization of the Federal Government to regulate for itself the election of Senators and Representatives. On July 25, 1866, however, a law passed by Congress established a uniform system. By the method then prescribed, and until recently it was in force, every member of each branch of the Legislature (on the second Tuesday after it had met and organized) was empowered to name by a *viva voce* vote a person for United States Senator. If no candidate received a majority in each branch of the Legislature, the houses met in joint session at noon on the following day and cast a ballot. This vote was repeated every legislative day until a Senator was chosen.

The preceding paragraph describes the old method of electing United States Senators by the legislatures of the various States. Since the passage of the Seventeenth Amendment, Senators are chosen by the qualified voters of the States just as Representatives have always been. Any citizen who can vote for a Representative in Congress can vote for a Senator in Congress. For short, the former are called "Members" and the latter Senators.

Members Chosen on Same Day.

For a long time the manner of electing Representatives was likewise lacking in uniformity. Even within the same State members were chosen on different days. By Acts of Congress passed in 1871 and 1872 it was provided that elections be by ballot, and that all Representatives be chosen on the Tuesday following the first Monday of November. By an amendment of the latter statute a few States are still allowed to hold Congressional elections somewhat earlier.

"The Congress shall assemble at least once in every year, and such meetings shall be on the first Monday in December, unless they shall by law appoint a different day." Pursuant to this provision the Congress has been accustomed since

1789 to meet on the first Monday in December. When, however, a great emergency seems to require it, the President is empowered to convoke Congress in special session. To take measures for preserving the Union the Thirty-seventh Congress, in response to a proclamation of President Lincoln, assembled in extra session July 4, 1861. In the history of the Federal Government there have been about fifteen instances of meeting before the regular time.

Perhaps the long and the short sessions can best be explained by following the career of a particular Congress. The first thing to remember is that the United States Senate is a body with a permanent organization. On the Tuesday after the first Monday of November, 1908, a new House of Representatives was elected, that is, it was chosen in an even year. The members then elected, however, did not meet on the first Monday in December, 1908, because the preceding Congress was in session till March 4, 1909, when its term expired. The House elected in November, 1908, did not meet until December, 1909. It will be noticed that between its election and its first meeting there elapsed an interval of thirteen months. When that Congress convened it continued in session till the summer of 1910. This is called the long session, and it begins in the odd years. It met again in December, 1910, and, except for a brief adjournment during the Christmas holidays, remained in session until March 4, 1911, when its term expired. This last is known as the short session.

Long Session.
Short Session.

As previously explained, the membership of the United States Senate changes every two years only one third. After the inauguration of a President it is customary to call what is termed an executive session of the Senate. This is for the purpose of confirming or rejecting nominations to office, or it may be for the purpose of acting upon treaties of importance. On such occasions it is not necessary for the House to meet because it does not share in either the treaty-making or the appointing power.

Executive Session.

Concerning the following provisions scarcely any commentary is required: "Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide."

From the very beginning of the Federal Government each House has exercised its constitutional authority to admit or exclude candidates for seats in Congress. At the opening of the Thirty-ninth Congress, December 4, 1865, there were present in the city of Washington, Senators and Representatives from nearly all the late Confederate States. A majority of them expected, no doubt, to be admitted without any unusual formality to seats in the respective Houses. They were not, however, so admitted but instead a Joint Committee on Reconstruction was appointed by Congress to inquire into conditions among the members of the late Confederacy and ascertain whether any of them had so far returned to their allegiance to the Union as to be entitled to representation in Congress. A favorable report was made in the case of Tennessee alone, and on July 24, 1866, by the admission of her delegation to Congress she was restored to her normal relations in the Union.

A Quorum.

By a quorum is meant, of course, a numerical majority. In the Senate, for example, a quorum is forty-nine—that is, forty-nine is a majority of ninety-six, all the Senators to which the forty-eight States are entitled. It should be remembered that forty-nine Senators can engage in legislation, and that in most cases a majority of this quorum, twenty-five, can with the coöperation of the House pass laws. For the ratification of treaties, however, two thirds of the Senators present must concur.

Under the Articles of Confederation the attendance of members was very irregular; hence the necessity of some compulsory provision on this subject. Indeed, when the Constitution was about to

be put into operation the old tradition made it difficult to get a quorum, and at first members came in very slowly. This tardiness in assembling was one reason why Washington was not inaugurated till April 30, 1789.

"Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member."

Two Thirds Required for Expulsion.

If a bare numerical majority could expel a Senator or a Representative there is no doubt that on occasions when party spirit is aroused the stronger element would sometimes exercise its power by expelling members of the minority. This injustice would ultimately be opposed by force.

"Each House shall keep a journal of its proceedings, and from time to time publish the same excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal."

"Neither House, during the session of Congress, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting."

"The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except for Treason, Felony and Breach of the Peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place."

Compensation and Privileges.

Under The Articles of Confederation each commonwealth paid its own delegates and was entitled to send to the Congress from two to seven members, but whatever the number sent they had collectively only one vote. Under that system Rhode Island exercised upon legislation as much influence as did Virginia. If a State sent seven delegates to the Continental Congress, she was under a heavier expense than one which sent only two delegates. This system resulted in minimum representation, for States that were distant from the capital would generally not care to send and maintain a large delegation. Under the Constitution, however, Congressmen are paid out of the United States Treasury, and in consequence each State is anxious to send to Congress as many Representatives as it can get.

Senators and Representatives Get Same Salary.

In examining the question of the compensation of members the first thing to make clear is that Senators and Representatives are paid precisely the same salary. The office of Senator, it is true, is more important than that of Representative, but this superior consequence does not arise from any difference in salary. The greater importance of the Senatorial office is due, among other things, to the fact that the Senator holds his position for a period of six years and that he is commonly in charge of the party organization in his own State. This places many important appointments at his disposal, and often puts Representatives themselves under obligations to him. Nevertheless, the salary of the Representative and the Senator is the same. By a law recently enacted the compensation of each has been fixed at $7,500 a year. For a long period, however, it was only $5,000. In addition to the salary an allowance for traveling expenses of twenty cents a mile is paid to members in going to and returning from the annual and the extra session of Congress. To members who represent States at a great distance from the city of Washington this item of mileage makes a material addition to salaries. Congress-

Mileage, Etc.

men have also an allowance for clerks. Members of both Houses possess the franking privilege and receive an allowance for stationery.

Freedom From Arrest.

The exemption from arrest, except for treason, felony and breach of the peace, seems to be a privilege essential to the independence as well as the greatest usefulness of members of Congress. At times indeed it may appear to injure individuals by preventing them from enforcing their rights against Representatives or Senators, but in the long run these inconveniences will be found to be greatly outweighed by the advantages of the privilege.

Not Liable for Slander or Libel.

If for speeches delivered in Congress members were subject to suits for slander or for libel, the public business would be greatly embarrassed by the legal proceedings certain to be instituted against Representatives and Senators. Their constitutional privilege tends greatly to confirm the independence of members and insures perfect freedom of debate. Judge Cooley, *Constitutional Law*, p. 50, holds that the privilege is confined strictly to what is said "in the House or in committee in discharge of legislative duty."

Restraints.

While members enjoy these privileges there are also incident to their offices a few limitations of which the purpose is apparent. "No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office."

One evident result of the first part of this provision is to

discourage somewhat the creation of unnecessary offices. The expectation on the part of Congressmen of filling desirable places would tend naturally to increase their number. From the second part of the provision it is clear that a Representative or a Senator who accepts a Federal office thereby forfeits his seat. Of course he can be again elected but he cannot take his seat until he has first resigned the Federal office.

CHAPTER VII

THE FRAME OF GOVERNMENT

(*Continued*)

"ALL bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills."* As is well known this provision is borrowed from a principle of the British Constitution, which requires all money bills to originate in the House of Commons.

This power, conferred exclusively upon the House of Representatives, is not after all a very important one, because by a succession of amendments the Senate can so modify a revenue bill as completely to change it. In practice the regulation is always respected.

At a critical period of American history, Henry Clay, perhaps the greatest of our parliamentary leaders, introduced into the Senate a tariff measure. This was the famous bill for composing the difficulties growing out of Nullification. In an advanced stage of its discussion the constitutional point was raised, and for the moment the measure was dropped. A bill almost identical in substance which was pending in the House was promptly passed by that chamber. This measure was then passed by the Senate.

THE POWERS OF CONGRESS are of two kinds, *viz.*: (*a*) those enumerated in the Constitution, and familiarly known as Express Powers, and (*b*) those derived from them and known as Implied Powers. As to the extent of the latter the American people have always been divided in opinion. In the specific mention of powers in the Constitution it is declared that

"The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common

* Art. I, Sec. 7, cl. 1, of the Constitution of the United States.

Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

Of the powers which we are about to consider that of taxation is the most important. Indeed it is indispensable to the existence of government. It was the lack of this power that wrecked the government under the Articles of Confederation. In this provision, as in those which follow, the powers of Congress *are not defined* but merely mentioned or enumerated.

Varieties of Taxes.

As it is usually defined, a tax is a portion of private property taken for public use. The term includes all those regular charges made by government for the purpose of raising revenue. They are assessed upon persons, property, occupations, privileges, *etc.* In this sense duties, imposts and excises are taxes. The first two, duties and imposts, are almost equivalent terms, and they are applied to those government charges laid upon merchandise exported from or imported into a country. In the United States no duty can be levied on exported commodities. A familiar illustration of excise is the tax on manufactured tobacco, or that on distilled liquor. From this provision it is clear that the same rate is to be levied upon the same article everywhere. Thus in the District of Columbia, the territories and the states, commodities are subject to the same rate of taxation.

This important power is conferred upon Congress in order to pay the debts and provide for the common defence and the general welfare.

There is, it is true, another interpretation of its meaning. By some it is held that there is conferred upon Congress a general power of taxation and also a general authority to provide for the public welfare. If Congress is vested with a general capacity to lay taxes in order to provide for the general welfare, its powers are dangerously extensive. The former construction has been

almost universally adopted, and if we consider the suspicion with which at the outset the new government was regarded, the interpretation does not seem unreasonable.

Congress is authorized "to borrow Money on the Credit of the United States." A similar provision existed in the Articles of Confederation, and the power was frequently employed by the Continental Congress. Under the Constitution it has often been exercised, and because of this authority Congress can borrow money in all the ways known to the business world. The usual method, however, is to offer for sale bonds of the United States Government. The purchaser of one of these bonds receives an instrument which is an evidence of Government indebtedness to him. On this instrument, or bond, he draws interest. With it he can engage in every sort of mercantile transaction that would be open to him if he had kept his money. Moreover, this bond is not subject to State taxation, for if it were, people generally would not buy Government bonds, and the power of Congress to borrow money would be greatly impaired, whereas by the Constitution it appears to be subject to no restraint. Indeed, it seems to be as wide as the needs of the Government.

When in 1791 it was proposed to establish the first United States Bank the project was opposed on the ground that it was unconstitutional. Though not the chief argument of the friends of the Bank, many of them appealed to the borrowing power of Congress as a justification for its establishment. The Bank, they contended, would greatly assist the Government in managing its finances. Then, too, the Government could borrow from the Bank. Again, in 1816, when the second United States Bank was chartered, the same objections were made and the same arguments urged. The power conferred by this clause is also held to be the legal basis of our present system of national banks.

Another method of borrowing money is to issue for either a short period or for an indefinite one notes which may or may not bear interest. On June 30, 1812, shortly after war was declared against

England, Congress passed an act authorizing the issue of Treasury notes. These were to be in denominations of not less than $100; they were to be retired in one year, and were made receivable for all payments due the United Stats. The notes of small denominations bore interest at the rate of 5 2/5 per cent. During the course of that war Treasury notes were issued to the amount of more than $36,000,000.

Another important power conferred upon Congress is that relating to commerce. The preceding pages, Chapter III, have suggested incidentally the commercial relations of New York and Connecticut, of New York and New Jersey and of Maryland and Virginia in the period immediately following the acknowledgment of American independence. This lack of inter-state comity was one of the chief influences which brought together the Constitutional Convention. To the Annapolis convention of 1786 the delegates or commissioners from New Jersey were sent with authority "to consider how far a uniform system in their commercial regulations and other important matters might be necessary to the common interest and permanent harmony of the several states, and to report such an act on the subject, as when ratified by them would enable the United States, in Congress assembled, effectually to provide for the exigencies of the Union."*

Power over Commerce.

From this testimony it is clear that at least one of the states regarded the regulation of commerce as a matter of primary importance. While this sentiment appears to point to only inter-state commerce, the same commonwealth when ratifying the Articles of Confederation had insisted that the exclusive power of regulating trade with foreign nations ought clearly to be vested in Congress; that is, in the Con-

Regulation of Commerce.

* *Elliott's Debates*, I, p. 117.

gress under the Articles of Confederation. These as well as other facts of our political history should make it plain to the student that the principles of the Constitution were not discovered in the Philadelphia Convention. At present we are not so much concerned with the history as the meaning of this important grant of power.

In the language of the Constitution, Congress is authorized "to regulate Commerce with foreign nations and among the several states and with the Indian tribes." On this subject a multitude of decisions by the United States Supreme Court has made clear several important points:

Meaning of "Commerce."

(*a*) The term commerce includes not only the notion of *traffic,* that is, interchange of merchandise, but (*b*) also that of *navigation,* or the conveyance of goods from one country to another or from one state to another. Commerce, then, includes the twofold notion of the exchange of goods and of their transportation. These are the elements of commerce which Congress is empowered to regulate. Hence any rule governing the interchange of merchandise would be a regulation of commerce. For instance a law prescribing rules concerning the safety or the number of a ship's crew would be a regulation of commerce.

Power not Absolute.

As already hinted the power to regulate commerce was not possessed by the United States Government under the Articles of Confederation, nor has it under the Constitution been wholly conferred upon Congress, for the states have retained certain powers over the subject. The nature of this state regulation of commerce will presently be noticed. From these observations it follows that in the examination of this subject it is of primary importance to remember that Congress does not possess absolute power to regulate commerce

but only "to regulate commerce with foreign nations and among the several states and with the Indian tribes."

If commerce with foreign countries was to be regulated with any degree of uniformity, it is clear that such regulation could only be effected by the General Government. How this intercourse was managed by the several states under the Confederation is well known. For reasons already mentioned the Confederation proved unequal to the establishment of any harmonious system of inter-state commerce. The Indian tribes being recognized to some extent as self-governing bodies the regulation of commerce with them should, of course, be under the control of Congress.

As early as 1718-19, Deputy Governor Keith, of Pennsylvania, suggested in a communication to the Lords of Trade and Plantations that the regulation of traffic with the Indian tribes be vested exclusively in Great Britain. He likewise pointed out the danger of leaving so important a matter to the wisdom of the various colonies.

Early in the nineteenth century the legislature of New York conferred upon Robert R. Livingston and Robert Fulton the exclusive right to navigate by steam the waters of that state. Notwithstanding this law, Gibbons ran a steamboat between New York City and Elizabethport, New Jersey. Under acts of Congress this boat had been duly licensed and enrolled for the coasting trade. Ogden, who had succeeded to the rights of Livingston and Fulton, instituted in the courts of New York a suit to restrain Gibbons from running his vessel in the jurisdiction of that state. The state courts decided in his favor. Thereupon Gibbons appealed to the Supreme Court of the United States. In that tribunal the case was argued with great ability by some of the leading lawyers of that time, among them Thomas Addis Emmett and Daniel Webster. The opinion of the United States Supreme Court, which decided against the claims of Ogden, was prepared by Chief Justice Marshall, and is undoubtedly one of his masterpieces. It will be found, pp. 1-240, Vol. IX, of Wheaton's Reports, and is a very clear interpretation of the extent of the power conferred upon Congress to regulate commerce among the several states. According to this celebrated decision trading intercourse "among the several states" is commerce which commences in one, terminates in another, and may

pass through a third. The word "among" is the important one. Concerning commerce, therefore, which originated in the interior of New Jersey and terminated in the interior of New York, Congress had the right of regulation. By the long embargo of Jefferson's administration and the restrictive measures of his successor the trade of New England nearly perished. The people of that section admitted the right of Congress to regulate but not on the pretence of regulating to destroy commerce.

What Congress Can Do.

Under this grant Congress has power to pass laws designating the ports at which ships may enter, discharge, load, be cleared, *etc.* It can legislate concerning improvements of navigable rivers and harbors. Besides this authority to pass laws respecting the places where trading is carried on Congress is empowered to legislate relative to the means and instruments by which that trade is conducted. It can also pass laws concerning the subject-matter of commerce. At different times laws have been passed controlling the importation of adulterated drugs and forbidding the importation of immoral books and pictures.

What States Can Do.

In establishing the Federal Government the states did not surrender all their power to make laws respecting commerce. The states may pass laws concerning harbor regulations or laws regarding the employment of pilots. Unless they are in conflict with acts of Congress on the same subjects such enactments are valid, though it is clear that such rules or regulations may affect foreign or inter-state commerce. A State may, for instance, require railway engineers to procure a license and this even if they are employed by railroads engaged in inter-state commerce. It may be observed generally that the United States Supreme Court has been very reluctant to interfere with the police power of the several states. This leaves to the members of the Union a wide field for legislation concerning the health and the morals of their people.

CHAPTER VIII

THE FRAME OF GOVERNMENT

(Continued)

CONGRESS is empowered "To establish a uniform rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."* Naturalization is the act of conferring upon an alien the rights, privileges and immunities of citizenship. In another connection, pages 11-19, chapter I, some of these rights and privileges have been mentioned. Foreigners may acquire membership in our body politic in two ways, *viz.* by (*a*) annexation and by (*b*) naturalization.

Article III of the treaty for the cession of Louisiana reads: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible according to the principles of the Federal Constitution to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."† For the present we are concerned with only the first part of the article quoted. Thus by the method of annexation were the inhabitants of the Louisiana territory admitted in 1803 to membership in this Union.

Citizens by Annexation.

In the treaty of 1819, by which Spain ceded both east and west Florida to the United States, there is a similar provision. By annexation the citizens of the republic of Texas became citizens of the United States. Articles of the treaty with Mexico made provisions substantially the same as the foregoing for

* Art. I, Sec. 8, cl. 4, Constitution of the United States.
† *Treaties with Foreign Countries*, in Force July 7, 1898, p. 176.

those Mexican citizens who continued to reside in California, New Mexico, and in the vast territory acquired in 1848. Thus the Zuñi and other Indian tribes became, and their descendants continue to be citizens of the United states. With these exceptions, Indians, nothwithstanding the place of their birth, are not citizens of the United States, and they cannot be made citizens by naturalization. On the division of land in an Indian reservation, it is true, those Indians who accept their shares under such an apportionment may become citizens if Congress so provides. Such legislation has been enacted by Congress.

Some Indians Are Citizens.

After some delay the status of Porto Ricans and Filipinos was fixed by Congress. Any citizen of either possession may become an American citizen by declaring his intention two years before admission to citizenship. He need renounce no allegiance or complete any term of residence.

Those aliens who do not acquire the status of citizenship by the annexation of their territory may acquire it by the process of naturalization. As the term suggests, this process makes a person "natural;" that is, when completed, it leaves him as if he were a citizen by nature. The power to naturalize aliens is not shared by the several states but is vested exclusively in Congress.

Naturalization.

It should first be observed that Americans do not regard naturalization as a right to which all races are entitled. Until 1870 no one but a "free white person" could acquire citizenship. In the United States Senate an attempt to strike out the word "white" was defeated by a single vote. It was then enacted that only "free white persons" and "aliens of African nativity and persons of African descent" could be

Negroes Become Citizens.

admitted to citizenship. Alien Mongolians, Japanese, especially Chinese, and Malays can not be naturalized in the United States. Our courts deny them naturalization on the ground of color. Nevertheless, though the parents can not by the process of naturalization their children by the fact of birth can become citizens of the United States.

Mongolians Denied Naturalization.

Members of those races entitled by American opinion to the privilege of naturalization can become citizens of the United States after a residence of five years. The person who applies for naturalization must first go into a court and declare his intention to become a citizen of the United States and renounce his allegiance to any foreign power. This he must do at least two years before he attempts to complete his naturalization. This preliminary step is what is popularly known as taking out the "first papers." Though this step may be taken at any time after the arrival of the applicant in this country, it is customary to wait for three years. This period will enable the candidate for citizenship to become somewhat familiar with American institutions. On appearing in court, two years later, to complete the process of naturalization, he must be accompanied by two witnesses, who are required to testify that he has resided in the United States for five years, that he is a person of good moral character and is attached to the principles of the Constitution. He is also required to renounce under oath his allegiance to the country from which he came. No matter how long a foreigner resides in the United States before declaring his intention, he cannot be naturalized until the expiration of two years from the time of making that declaration. In all cases the first papers

Process of Naturalization.

must be taken out two years before a certificate of full citizenship is granted.

The wife and the minor children of a man who has been naturalized become citizens without taking out separate papers. An alien woman who applies for citizenship must possess the same qualifications as are required in the case of a man. Though she may by marrying a citizen acquire the same status as if she had been naturalized. Some of the privileges of American citizenship have already been mentioned. Its obligations and duties will form the subject of a later chapter.

Though Congress prescribes the rules governing naturalization, the applicant for citizenship can "declare his intention," and, two years later, complete the process in any court of record, State or Federal. Except for a very brief interval, 1798-1802, the period of residence has always been, and it is now, five years. The sentiment which enacted the Alien and Sedition Laws amended the act of 1795 by extending the period of residence to fourteen years.

A bankruptcy law provides for distributing the property of an insolvent debtor among his creditors. Of course, this distribution is in proportion to their proved claims. A bankruptcy law may also discharge the failing debtor from further liability to his creditors. In such a law, therefore, there may be two elements, one which provides for distribution and one which exempts from further liability. Congress is empowered to pass laws including one or both of these features.

A law on the subject of bankruptcies was passed by Congress in 1800, and continued in force for three years; that passed in 1841 was of even shorter duration. The act of 1867 was repealed in 1878, and the present law was enacted in 1898. From this summary it is clear that there has been during the greater part of the time since 1789 no uniform law on the subject of bankruptcies.

When Congress abstains from passing a general law on this subject, the various state legislatures are free to act, and, indeed, they have frequently so acted. When, however, Congress chooses to pass a uniform law, all state regulations are suspended.

"The Congress shall have Power . . . to coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures."* In the act of coinage several processes are involved: the metal intended to be used as money is examined chemically so that its ingredients and their proportions can be ascertained; the metal is then subdivided and stamped. The coining of a metal then, is a certification of weight and fineness, but not necessarily of value. By value we now understand purchasing power. The same coin may exchange at one time for more goods than it will at another. In this sense Congress cannot regulate the value of even its own coins, for value is not determined solely by legislative enactment. But all coins, whether domestic or foreign, in circulation in the United States, can be appraised by Congress, in the sense that it can determine the valuation of them in its own receipts and payments as well as between individuals.

What Coinage is.

Regulation of Value.

Before 1860 many gold coins and one hundred and seventy-four varieties of silver coins were in circulation in the United States. By successive acts of Congress, beginning in 1793, certain named gold and silver coins, if of full weight, have been made legal tender in the United States. All foreign coins in circulation, however, have not been made legal tender.

* Art I, Sec. 8, cl. 5, Constitution of the United States.

By legal tender is understood coin or other money that may legally be offered in payment of a debt. The debtor may deposit in court that which the law declares a legal tender, and can then obtain his discharge. In colonial times many different commodities were legal tender, *e. g.,* tobacco, peas, wheat, Indian corn and oats. Indeed, at the present time there are varieties of legal tender. Gold coins are legal tender without limit; also silver dollars, and for certain purposes Treasury notes under the act of 1890. Except for paying interest on the public debt, United States notes (greenbacks) are legal tender. National Bank notes are legal tender for certain purposes. Silver coins smaller than one dollar are legal tender to the amount of ten dollars in one payment. Coins of nickel and copper are legal tender to the amount of twenty-five cents in one payment.

Legal Tender.

The Constitution further provides that no State shall "coin money," or "make anything but gold and silver coin a tender in payment of debts." From these provisions it is clear that, as in the case of naturalization, the whole subject of coining money and regulating its value is vested exclusively in Congress. If there existed any lack of uniformity in the currency of the United States, commerce would be greatly embarrassed. For other reasons, therefore, besides those mentioned it is necessary that this power be vested in Congress.

Power Exclusive.

In the preceding remarks on the power Congress to coin money it has been assumed that the provision has reference to only the assaying and stamping of the precious metals, that is, to the coinage of gold and silver. By judicial opinion it has been held that the phrase "coin money and regulate the value thereof" is equivalent to making money or supplying a currency. Jefferson, indeed, alluded to the use of

Treasury certificates as "coining and striking money," and Franklin appears to have understood it in a sense even wider.

Immediately following the express power to coin money is one which confers upon Congress the authority "to provide for the punishment of counterfeiting the securities and current coin of the United States." This clause appears to require no further commentary than to remark that for the offences mentioned the states also may inflict punishment; in a word, the power is concurrent.

A Concurrent Power.

In 1866 Congress passed a law authorizing the use of the Metric system of Weights and Measures. Previous attempts had been made to secure its adoption, but though recommended by a President and by Congress the business men of the country have continued to use the familiar British system. From colonial times this was everywhere in use, and it was natural for Congress to adopt it. In consequence of the failure of Congress to pass a uniform law on the subject each State continues to make its own regulations. In this case Congress has not exercised the authority conferred upon it by the Constitution. The great number of existing state laws would be a nullity if Congress chose to fix for the whole country "the standard of Weights and Measures."

Metric System Legalized.

In language comprehensive though somewhat vague, Congress is empowered "To establish Post Offices and Post Roads."* In his Principles of Constitutional Law, p. 84 (ed. 1880) Cooley says that "Whatever place is officially kept as a place of deposit of mailable matter is a post office, though it be merely a desk or a trunk or a box carried about

Post Office Department.

* Art. I, Sec. 8, cl. 7, Constitution of the United States.

a house or from one building to another." Because of this grant of power Congress has created and, through the Post Office Department, regulates the entire postal system of the country. This Department superintends the transportation of mail; selects the places where it shall be received and delivered, and designates the routes over which it shall be carried. By reason of this authority Congress has in many places erected and hired buildings for the purpose of receiving and delivering mail.

In a few instances Congress has constructed roads for the purpose of transporting mails, but it has long been held that the power to establish post-roads confers no more than the authority to designate over what existing routes the mails shall be carried. Some hold that it is only a military necessity that would justify the Federal construction of roads. It is, however, in virtue of this obscure grant that Congress gave aid in the construction of the Pacific Railway. This action might, it is true, be referred to the general welfare clause.

Copyrights and Patents.

By national laws a citizen can receive protection for his intellectual property. The Constitution, Art. I, sec. 8, cl. 8, vests in Congress the power to secure for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Because of this authority Congress has created the patent and copyright system of the United States. On these subjects laws were passed as early as 1790. The term patent was then used to describe an invention or discovery; copyright signified the exclusive right of an author to publish his writings. The cotton-gin, of Whitney, and the steamboat, of Fulton, were among the early patents that were issued.

Patent.

According to the regulations prescribed by Congress the discoverer of a useful invention or process applies to the Patent Office, a bureau of the Interior Department, for a patent. Examiners of that office investigate his claim, and if they are satisfied that the invention is new and useful, letters patent are granted. These give to the inventor the exclusive right to manufacture, use or transfer to others his discovery or invention. The patent received from the General Government does not, however, enable the patentee to disregard the laws of the several States. For instance the inventor of a dangerous toy pistol might by State regulations be prevented from manufacturing or selling it within the limits of a particular commonwealth. As a general principle the Federal Government does not attempt to interfere with the police powers of the States.

The term of a patent is seventeen years, and the fee for procuring it thirty-five dollars. In the year 1900 alone 28,000 patents were granted and 21,000 expired. Because of the vast number of claims pending before the Patent Office their merits may not be, and frequently they are not rigorously investigated. That is, the examinations may not be sufficiently exhaustive. This may render it necessary for the inventor subsequently to have his rights determined in court. So completely do the laws of Congress cover the field of patents and copyrights that the States have not entered it.

Copyright.

Copyright is usually defined as the exclusive right secured by law to authors and artists to publish and dispose of their works for a limited time. In the United States the term of a copyright is twenty-eight years with the privilege of renewal for fourteen years more. Copyrights include books, maps, and musical compo-

sitions; also works of art, such as engravings, photographs, *etc.*

In order to obtain a copyright the law requires the author, or his publisher, to send, with an application in proper from, to the Register of Copyrights two copies of the best edition of the book. A fee of one dollar must accompany each application. Two copies of the book must be sent, promptly after publication, to the Librarian of Congress. In addition the author must announce, by printing on the title-page, or the page following, of every copy the fact and date of the copyright claimed.

CHAPTER IX

THE FRAME OF GOVERNMENT

(Continued)

By the Constitution, cl. 9, sec. 8, Congress is expressly empowered "To constitute Tribunals inferior to the Supreme Court." Though this authority has been freely exercised, an examination of the subject belongs to Article III, which sketches in outline the constitution of the Judicial Department. The succeeding clause confers upon Congress the power "To define and punish Piracies and Felonies committed on the high seas, and Offences against the law of Nations."

Piracy Defined.

By piracy is generally understood robbery committed by force of arms at sea. Pirates are outside of international law; are regarded as public enemies, and are amenable to the tribunals of their captors. A pirate may be justly seized by a vessel of any nation, and any state may make war on a piratical people even if it has never been injured by them. Except in the waters of China, Morocco and a few other backward countries pirates have disappeared. This result is due chiefly to the fact that powerful ships of war are constantly traversing the seas. Were this for any reason to cease, piracy would, no doubt, revive.

A Privateer.

The privateer is to be distinguished from the pirate. The former carries with him a commission from his government to destroy the property of an enemy with which his country is at war. If he is captured, he is entitled to be treated as a prisoner of war. The pirate who is overpowered and taken is liable to be hanged.

In the United States the term felony is used to describe one of the offences of the highest class and is usually punishable with death or confinement in a State prison. If such an offence, for instance a murder, be committed on an American vessel in distant seas, Congress determines the tribunal in which the crime shall be tried. It is likewise authorized to provide for the punishment of piracies as well as offences against the law of nations. For the purpose of this explanation the law of nations may be defined as the body of rules which civilized states acknowledge as binding in their relations to each other and to each other's subjects.

Felony Explained.

The Law of Nations.

By writers on international law it is generally admitted that states have some sort of jurisdiction over a belt of sea along their coasts. This is what is commonly described as coast-sea, and in modern times was first limited to a cannon-shot, and later to a marine league. It is an interesting matter and by no means easy to determine what right a state possesses over this belt of sea. That it enjoys some rights over it is beyond question. A state can, for instance, exercise over this strip of sea along its coast such powers as may be necessary to protect its revenue system, and it can protect its citizens or subjects who may within that limit be following a lawful occupation as, for example, that of fishing. The state cannot, however, exercise over this part of the sea the same rights which it does over the land. It would certainly be no offence for a foreign vessel plying between different ports to sail through any part of this three mile belt, though foreign warships could scarcely regard it as a right to engage each other in battle within that limit. The phrase "high-seas," as used in the Constitution, signifies tide waters below low-water mark.

The "High Seas."

By the succeeding clause Congress is authorized "To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water."* As other provisions of the Constitution confer upon Congress the power "to raise and support armies" and "to provide and maintain" a navy, it seems appropriate to vest in that body the important power to declare war. The withholding of this power from the President was originally regarded as a peculiar merit in our fundamental law, but it has long been recognized that this is no more than a paper advantage, for it is well within the power of the Executive to do acts which may provoke a war. That is, though the President cannot formally declare war against a foreign state, he may in the exercise of his discretion do an act which will lead that state to declare war against us.

Congress Can Declare War.

Though the power to raise and support armies is vested exclusively in Congress, that body cannot maintain a permanent force, because Congress can make no appropriation of money for this purpose for a longer term than two years. By the phrase "letters of marque and reprisal" is meant the granting of commissions to private persons authorizing them to take, wherever found, persons or property belonging to a foreign state. A preceding paragraph has pointed out the distinction between a pirate and a privateer. The phrase "captures on land and sea" includes persons and things taken in war, and concerning both Congress is empowered to make rules or regulations.

Letters of Marque and Reprisal.

More important than any of these provisions and because of its history more interesting is that which empowers Congress "To provide for calling forth the Militia to execute

* Art I, Sec. 8, cl. 11, Constitution of the United States.

the Laws of the Union, suppress Insurrections and repel Invasions."

Under the Articles of Confederation there had grown up a habit of disobeying the measures of the Continental Congress, and under the Constitution the tendency might, not unnaturally, be expected to continue. Indeed, only a few years passed before there arose the grave question whether citizens of one State would at the call of the Federal authorities enter another commonwealth and assist the new Government to enforce its measures.

In the last decade of the XVIII century there was probably more whiskey manufactured and consumed in the four western counties of Pennsylvania than in any region of similar extent and equal population in the United States. Along the banks of the Monongahela and the Ohio a gallon of whiskey was everywhere regarded as the equivalent of a shilling. In fact, it had become the principal medium of exchange, or the money of that community. When an excise law of Congress proposed to lay upon every gallon of whiskey a tax of seven cents, those interested in its manufacture became exceedingly indignant. The inspectors, whose duty it was to mark the barrels, the collectors of revenue, and the officers who attempted to serve processes in that region were generally treated with great severity and in some cases even with barbarity by the more turbulent citizens, who continued from 1791 to 1794 to increase both in numbers and ferocity.

In these circumstances President Washington called for troops, and from New Jersey, Maryland, Virginia and Pennsylvania a large body of militia responded. Except the Maryland force, which was led by a Congressman, the various contingents were commanded by their governors. The army was so large that no resistance was offered by the "Whiskey Boys" and their friends. In a little while the greater part of the Federal troops returned to their homes. But they left behind them a small army of 2,500 men under General Morgan, the distinguished officer of the Revolution. Its presence soon restored order in the troubled region.

The Whiskey Insurrection proved that the new Government would enforce its laws, and in 1861 the incident furnished President Lincoln with a precedent for calling forth the militia of the several States to enforce the laws of the Union and suppress insurrection.

Whiskey Insurrection.

During the Revolutionary War, while the Continental Congress was sitting in Philadelphia, a small party of boisterous or drunken soldiers, under a sergeant, marched from Lancaster to the capital and intimidated Congress. That body appealed for protection to the authorities of Pennsylvania; nevertheless, nothing was done to provide for its safety. This experience of the national legislature may not be unconnected with the clause in the Constitution which has given Congress the power to protect itself. By this provision Congress is authorized "to exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, etc."*

Authority over District of Columbia.

This exclusive right to make laws for the District of Columbia accounts for the great number of petitions received by Congress from anti-slavery societies in the generation preceding the Civil War. If it could not put an end to the institution of slavery in the various states, it could at least abolish the system in the District of Columbia and in other districts over which it had exclusive legislative power. Congress, however, never acted upon these petitions, and in the District of Columbia negro slavery continued until the last years of the War.

Finally Congress is given power "To make all Laws which shall be necessary and proper for carrying into Execution

* Art. 1, Sec. 8, cl. 17, Constitution of the United States.

the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."*

By some of our ablest statesmen this clause was held to confer upon Congress no new grant of power, simply an authority which by implication it already possessed. Other statesmen, almost equally eminent, held a contrary opinion. We need now be in no uncertainty as to the meaning of this provision, for we have for our guidance a decision of the United States Supreme Court, written by Chief Justice Marshall himself, in an opinion rendered in the famous case of McCulloch vs. Maryland, U. S. Reports, 4 Wheaton, 316.

This case grew out of an attempt by the authorities of Maryland to impose a tax upon a branch of the Second United States Bank, which had engaged in business in the City of Baltimore. We have already seen that Congress is empowered to borrow money on the credit of the United States, and that it can do this in all the ways known to the commercial world. In 1816 Congress chartered the above mentioned institution for a period of twenty years. It was believed that it would promote uniformity of the currency, and it was intended to facilitate the collection and disbursement of the United States revenue. In a word, it was a fiscal agent of the United States, and if a state could impose upon that institution a small tax, it had the right to levy a large one, but if it could tax the bank at all, it had it in its power completely to destroy it.

The "Necessary and Proper" Clause.

The word "necessary," Marshall said, can exist in different degress; a thing can be necessary, it can be *very* necessary, or it can be *indispensably* necessary. Now the Constitution does not say that Congress is empowered to pass all laws which may be indispensably necessary, or even all laws which may be very necessary, but merely that it can pass all laws which are necessary, that is, all laws which may be conducive to a particular object;

* Art. I, Sec. 8, cl. 18, Constitution of the United States.

laws which may promote the purposes of Congress. Of the necessity and propriety of creating the Bank, therefore, Congress was the judge. The Bank, which had been established by the two political departments, that is, by the Congress and the Executive, was declared by the Supreme Court to have been constitutional.

We have now made a concise examination of the powers expressly conferred upon Congress, and incidentally, as in the preceding paragraph, have noticed the implied powers. The power to borrow money is expressly stated in the Constitution, but it is not therein expressly stated that Congress has any authority to establish a bank. The creation of both the First and Second United States Banks, therefore, was by virtue of the implied powers of Congress.

RESTRAINTS UPON CONGRESS.

After enumerating the powers expressly conferred upon Congress the Constitution in the succeeding section mentions the restraints upon its power. Clause 1 of that section reads as follows:

"The Migration or Importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten Dollars for each Person."*

Compromise on Slave Trade.

In the Convention which framed the Constitution there were many conflicting elements, among them a party in favor of abolishing slavery and also a party in favor of continuing that institution indefinitely. Of course the opinions of both interests could not prevail, and it was possible to reach an agreement only by mutual concessions. Those opposed to the importation of slaves agreed to a con-

* Art. I., Sec. 9, cl. 1.

tinuance of the privilege for a period of twenty years, while those who desired to import negroes for an indefinite term consented to this limitation. This was one of the most famous of those compromises without which the Convention could have reached no agreement.

In a former chapter we have seen negroes referred to as "three-fifths of all other persons"; in the present section they are described as "such persons as any of the States now existing shall think proper to admit." Notwithstanding these euphemistic expressions, it is well known that the phrases were intended to describe negro slaves. By the constitutional provision Congress could not prohibit the importation of African slaves before the year 1808. This agreement was very carefully observed, for on January 1, of that year, by a law previously enacted, Congress prohibited the African slave trade. Prior to that date the only authority of Congress over the traffic was its ability to impose upon each slave imported a tax of ten dollars. So great, however, were the profits of the trade that so small a tax would not in the least discourage it and it became necessary for Congress altogether to prohibit it.

Importation of Slaves Prohibited After 1808.

"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Like many other provisions of the Constitution this was borrowed from the fundamental law of Great Britain. In the experience of that country, subjects were often seized by the authority of the government, carried off and confined in dungeons, often loathsome and sometimes dangerous to health. No process by their friends could reach them. Indeed, the places of their imprisonment were often kept secret from those who

Writ of Habeas Corpus.

were interested in their welfare. Even when laws were passed on this subject, they were often evaded. In 1679, however, the Habeas Corpus Act became a part of the British constitution. Since that time an Englishman has always been entitled to a hearing, at which the cause of his detention must be made known to him so that he can take measures for his defence.

Benefits of the Writ.

In examining this provision the student should first observe that it is, by its terms, a restraint upon some part of the Government, and that it occurs in the section which limits the powers of Congress. This would make it appear that when the privileges of the writ are suspended that suspension can be effected only by the authority of Congress. So great a constitutional lawyer as President Lincoln, however, thought otherwise, and early in the Civil War authorized one of his army officers, in the case of John Merryman, to suspend the privileges of the writ.

Merryman was believed or was known to be engaged in the vicinity of Baltimore in recruiting for the Confederate military service. He was seized at his home by a Federal troop and carried off to Fort McHenry. Thereupon his friends applied for a writ of Habeas Corpus to Chief Justice Taney, who happened at that time to be holding in Baltimore a session of the United States Circuit Court. The application was granted but when representatives from the office of the United States marshal attempted to serve the writ upon the commander of the fort, they were not allowed to enter. In making return of the writ it was declared that they were prevented from serving it by the military power of the United States. On being informed of the fact Justice Taney wrote the commander inquiring by what authority he had suspended the writ. That officer replied that he had done so by direction of the President. The Chief Justice then carefully examined the matter and concluded that the President did not possess the power, and, of course, could not delegate to another an authority which he did not himself possess. We are not now concerned with the nature of the correspondence that ensued nor with the published opinions of lawyers, who took up the discussion in various parts of the country. Soon after the subject was taken up by Congress. That body conferred

upon Mr. Lincoln the authority to suspend the writ when in his judgment the public safety appeared to require it. This delegation by Congress of the right to suspend the writ was equivalent to a declaration that the power is vested not in the Executive but in the Legislative branch of Government. The President, however, was not censured for having exercised the power.

CHAPTER X

THE FRAME OF GOVERNMENT

THE preceding chapter noticed two important restraints on Congressional action. The first proved interesting merely because it is an evidence that the institution of slavery was originally recognized by the Constitution. The second, that relating to the suspension of the privilege of the writ of *habeas corpus,* is still in force. In this chapter there will be enumerated and explained still other restraints upon the power of Congress. Taking them in the order in which they are mentioned in section 9 of Article I the next reads: "No Bill of Attainder of *ex post facto* Law shall be passed." By the first of these limitations is understood *legislative trial and punishment.* In England a bill of attainder is an act of Parliament "declaring a person by name, or a class of persons by description, to be guilty of crime, and ordering him or them to be capitally punished."* A statute which does not inflict the death punishment is known as a Bill of Pains and Penalties. The terrible use which had been made of these laws in England explains the appearance in our Constitution of this prohibition, and it applies to the several States as well as to Congress.

Bill of Attainder Defined.

Bill of Pains and Penalties.

Even very young students are aware that the ordinary function of Congress as well as of the State Legislatures is to make laws. Should either of them cease to legislate and assume the functions of a judicial body, that is, if

* *Constitutional Law,* Pomeroy, 319; 6th ed.

they pronounced upon the guilt of a party, without observing judicial forms, if they determined the sufficiency of the proofs and fixed the degree of punishment, they would be proceeding by the method of attainder. Stated in still another form, bills of attainder and bills of pains and penalties were convictions and sentences pronounced by the legislative instead of the judicial branch of the government. Speaking of such statutes, the authority just quoted says: "No trial is necessary; no legal evidence; no notice to the accused; no examination of witnesses; even no crime."

Ordinarily laws go into operation at the date of their passage, or at some future time. If, however, a law affects actions that took place before the date of its passage, such a law is said to be retro-active. Retro-active legislation generally is unpopular, though if such legislation affect only civil actions, it is not prohibited by the Constitution. If retro-active laws affect crimes, they are what are technically known as *ex post facto* laws. These are prohibited. By an *ex post facto* law, then, is understood one which makes criminal an act that was not a crime when it was committed, or if criminal when committed, one which increases the punishment due to the offence or which makes conviction easier. To make this explanation somewhat clearer let it be supposed that A, an inhabitant of New York, committed a murder on February 1, 1909. On that date the law required the concurrence of twelve jurors in order to convict him. If the Legislature should pass a law on February 15, two weeks after the commission of the crime, making the concurrence of nine jurors sufficient to convict, such a law would be *ex post facto,* and therefore void in the case of A. It is plain that this would make conviction easier. If on February 1, 1909, the law annexed to the crime of murder the penalty of life imprisonment, a later law imposing the penalty of death

Ex Post Facto Law Defined.

would be *ex post facto* as far as it concerned A. In a word, any law changing the judicial procedure would be of the nature of an *ex post facto* law.

A Direct Tax.

"No Capitation or other direct Tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken." A capitation or poll tax is a fixed sum of money paid by or for each person without reference to his property or business." Taxes assessed upon land are known as direct taxes. The familiar poll tax is also of the same class. All other species are called indirect taxes.

Congress Cannot Tax Exports.

Congress can lay no tax or duty on articles exported from any State. If it could do so, it would be possible for a majority of the National Legislature, supported by the President, seriously to cripple or altogether to destroy important industries in some of the States. The power of taxing exports is, therefore, denied to Congress for prudential reasons, because when the Constitution was framed, the States feared to trust the new Government with powers so extensive.

No Discrimination.

By the next provision it is not within the power of Congress to favor a particular port of entry. Under the law all ports are to enjoy equal privileges. Before the framing of the Constitution it was customary for Baltimore vessels to take on their cargoes; sail down the Chesapeake to Norfolk; enter at, and clear from that port, and after this considerable delay resume their voyages. The Maryland delegates in the Convention brought up this subject for consideration, and hence we find in the Constitution a provision that vessels bound to or from one State shall not "be obliged to enter, clear, or pay duties, in another." Since the adoption of the Constitution, then, Baltimore vessels, if their

masters so desire, can sail directly to their destination. So also can vessels from any other port.

Anti-Aristocratic Feeling.

The anti-aristocratic feeling of Americans of the Revolutionary era appears in the last of these limitations. "No Title of Nobility shall be granted by the United States." This, of course, is a restraint upon Congress, the Executive and the Judiciary. Such is a brief explanation of the nature of the restraints upon Congress. Other restraints on the powers of that body will be found in the first ten amendments.

Besides these express limitations, there are many that are implied. Congress can not, for example, exercise the powers conferred by the Constitution upon the Executive or upon the Judciary. Nor can it encroach upon that part of sovereignty which is left to the States. The next section of the Constitution, 10 of Article I, is concerned with restraints on the States.

RESTRAINTS ON THE STATES.

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money, emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder; *ex post facto* law, or Law impairing the Obligation of Contracts, or grant any title of Nobility."

States Can Form No Alliance.

It has just been observed that Congress can pass no bill of attainder or *ex post facto* law and that Congress, as well as the Executive and Judicial branches of the Government, can grant no title of nobility. From the clause just quoted it is clear that the same limitations are placed upon the States. But there are many other restraints on State action. These will be briefly noticed. "No State

shall enter into any treaty, alliance or confederation." This provision makes it plain that no member of the Union can enter into these relations with a foreign power. Our political history shows that this and another prohibition extended to alliances among the States themselves. Early in the year 1861 there was formed within the Union a very powerful league known as The Confederate States of America. Did the States which formed this confederation disregard the constitutional prohibition? The first commonwealth to attempt to leave the Union was South Carolina. First, however, that State passed an ordinance of secession. This, it was claimed, took her out of the Union, and the Constitution was therefore no longer binding upon her people. Four other States followed the example of South Carolina, and in February, 1861, their delegates met at Montgomery and organized the Confederacy. By forming no alliance until, as they supposed, they had first gone out of the Union, they observed the forms of the law. Later, however, they were joined by six other commonwealths, but these were not all so careful, for some of them, like Tennessee, turned over their military power to the Southern Confederacy before they had even passed ordinances of secession.

Coinage Forbidden. If the States were allowed to coin money, there would be no uniformity in the currency, and in consequence commerce would be greatly embarrassed. The States are likewise forbidden to emit bills of credit; that is, paper of any kind intended to pass from hand to hand as a substitute for currency. "No State can make anything but gold and silver coin a tender in payment of debts." The expression legal tender has already been defined.

Bills of Credit Forbidden.

The remaining provision is, perhaps, one of the most important in the Constitution, and has been the subject of more judicial discussion than almost any other. An eminent authority, Von Holst, *Constitutional Law of the United States,* p. 232, has said that to master this entire subject would be "the task of a life-time, and the trouble taken would be ill repaid." No State shall pass any law "impairing the Obligation of Contracts." Art. I, Sec. 10, Cl. 1.

Impairment of Contracts.

It is believed that this restraint upon the States was made a part of the Constitution in order to prevent the repudiation of debts and of private obligations. By judicial construction, however, it has been made much more comprehensive. Though this limitation seems to apply to only the States, it is not clear that Congress, if so disposed, could impair the obligation of contracts, for in a preceding chapter it was shown that Congress can exercise only those powers which are enumerated and those that may fairly be inferred from them. There is certainly granted to Congress no express power to pass a law impairing the obligation of contracts, nor does there occur to the writer any of the enumerated powers from which it may reasonably be inferred. Moreover, the impairment of contracts is generally held to be opposed to sound principles of legislation. With respect to the Federal Government, however, the difficulty lies in this, that the United States can not be sued; therefore, if Congress should pass a law impairing the obligation of contracts, the citizen has no redress.

A contract, as defined by Chief Justice Marshall, is "an agreement in which a party undertakes to do, or not to do, a particular thing." Contracts may be express or implied. When the parties state definitely what is to be done the contract is said to be express; when, however, they do not formally set forth the thing to be done or not to be done but when the stipulations are left to be inferred from the conduct or the relation of the parties, the contract is said to be implied. Contracts are also either executory or executed. When the promise is

Contract Defined.

as yet unperformed, the contract is said to be executory, and when it has been performed it is said to be executed.

"The obligation of a contract consists in its binding force on the party making it, which the law at the time recognizes, and for which it gives a remedy. . . . No promise or assurance can, therefore, constitute a contract, unless the law lends its sanction, and this in some cases it withholds."*

Law Must Sanction.

In popular though, perhaps, not in strict legal definition, any alteration of the substance of a contract or of the law governing it at the time it was entered into would be regarded as an impairment of the contract. On the other hand, an acceptance of this principle would seem to give to the Federal Government too great control over the policy of the various commonwealths. Those who advocate State's Rights would oppose this view.

The foundation for most of the judicial decisions on this constitutional provision is the opinion of Chief Justice Marshall in the case of *The Trustees of Dartmouth College* v. *Woodward,* 4th. Wheaton. Though they are very interesting, the facts cannot be related here, except in the merest outline.

In 1769 King George III granted a charter to Dartmouth College in the colony of New Hampshire. Under this instrument it continued to be governed by twelve trustees until 1816, when it was modified by acts of the State Legislature. This amendment, however, the trustees refused to accept. Under the old charter Woodward had been secretary and treasurer, but in 1816 he was removed. In 1817 the new board of trustees re-appointed him to his former office. Thereupon the old trustees sued him for the charter and other chattels of the college. The case being decided against them in the courts of New Hampshire, they brought it to the United States Supreme Court.

* Cooley, *Principles of Constitutional Law,* p. 301; ed. 1880.

An application had been made to the Crown for a charter to incorporate a religious and literary institution. The application stated that contributions would be made as soon as the corporation was created. The charter was granted, and on its faith considerable property was conveyed to the college. In this transaction, said the Court, there was to be found "every ingredient of a complete and legitimate contract."

A Contract Formed.

By the act of incorporation and the will of the founder the trustees were invested with certain rights, as, for instance, the right to appoint and remove professors and other officers; also the right to prescribe courses of instruction and to fill vacancies occurring in their number. In a word, certain rights were legally conferred upon the old trustees. By acts of the legislature these rights were in effect given over to a different set of men. The new trustees and twenty-five directors became the real administrators of the college. Webster, who pleaded the case of his *alma mater,* declared in substance that the taking of rights which belonged to A and the giving of them to B was not an act of legislation, but an act of oppression.

Not a Legislative Act.

Among other points the Court decided that the college was not a public but a private institution; therefore the State had no authority to provide for its government. It also held that a charter is a contract; that is, a private charter is a contract between the State and the corporation. The acts of the New Hampshire legislature making changes in the organization of the college impaired the obligation of the contract and were therefore void.

A Charter Is a Contract.

The remaining restraints upon State action require no commentary. Their meaning is self-evident.

The preceding chapters have explained briefly the constitution of Congress. From that examination it appears:

(*a*) That all legislative power vested in the Federal Government is granted to Congress.

(*b*) That Congress is composed of two branches, *viz.*, a House of Representatives and a Senate, whose members are chosen by the legal voters of the various commonwealths. It used formerly to be said that the Senators represented the sovereignty of the States and that the members of the House represented the people.

Three-fold Function of Senate.

The House is a law-making body almost exclusively. The Senate, however, performs three different functions, *viz.*, legislative, executive and judicial.

(*c*) It has been shown that Congress can not pass laws upon all conceivable subjects but only upon those enumerated in the Constitution. These are known as express powers, but in carrying them out it is very often necessary to pass laws upon subjects not mentioned in the Constitution. These laws are said to be passed by virtue of the implied powers. In respect to the extent of these there has been, and there still exists, considerable difference of opinion.

(*d*) Besides the granting of certain powers to Congress the Constitution also imposes upon it a number of limitations. This recalls a part of our definition that a constitution is a restraint upon government. Our Constitution, as already stated, does much besides. There are also limitations such as that concerning titles of nobility, placed upon the United States. This means that such distinctions can not be granted by any of the three departments. It will also be remembered that there are some important restraints upon the States.

(*e*) In inquiring whether Congress has the power to pass a law it is to be presumed that it cannot unless the power is expressly granted or unless it may be reasonably inferred from the powers granted. On the other hand, it is to be presumed that the State legislatures can pass laws upon all subjects whatever, unless the power is expressly denied.

CHAPTER XI

THE FRAME OF GOVERNMENT

The Executive

By the Constitution, Art. II, sec. 1, "The Executive Power is vested in a President of the United States of America." Under the Articles of Confederation there was no President. Functions now performed by that officer, so far as they were attended to at all, were left to committees and to boards and to Congress itself. This plan worked very unsatisfactorily. In determining whether the executive power should be vested in one person; in a commission of three (one from each section of the Union) or in a committee of thirteen, one from each State, the Convention was influenced by three important considerations, *viz.*, responsibility, promptness, and energy.

Reason for Single Executive.

It is clear that if the executive power was to be lodged in two or more persons, it would be impossible to fix the responsibility for an unwise or a bad act, or to reward a good one. Then, too, a committee would be likely to consider at great length a proposed act and to waste time in coming to a conclusion. Generally speaking, one person would act more promptly than a committee. When a single executive had once approved an act of Congress his official character would be bound up with its success, and he would see that the law was executed with energy. From this reasoning it is evident that the qualifications desired by the Convention would be found in a single rather than in a plural executive.

A popular election of the President was proposed though not adopted by the Convention of 1787. That method still finds favor with many, but it is not the plan provided by the Constitution. "He shall hold his Office during the Term of Four Years; and, together with the Vice-President chosen for the same Term, be elected as follows:"

Term of Office.

The qualified voters of the different States cast their ballots for citizens known as Presidential electors. The people do not vote directly for the President or the Vice-President. On the Tuesday after the first Monday in November of every fourth year the legal voters of all the States elect a number of persons whose duty it is to choose a President and a Vice-President. Each State is entitled to appoint in its own way as many electors as it has Senators and Representatives in Congress. Thus the State of Delaware, which has one Representative and two Senators in Congress, is entitled to appoint three Presidential electors, while New Jersey, which has twelve Representatives and two Senators, chooses fourteen. The body of electors appointed in each State is known as the electoral college. Its sole duty is to select a President and a Vice-President. It is clear that at any given time there are as many electors in all the States as there are Senators and Representatives in Congress.

Not Chosen Directly.

Number of Presidential Electors.

At first these electors were often, though not always, appointed by the legislatures of the various States. The method of choosing them by popular vote, however, gained ground, and after 1868 they were everywhere elected by the people. "No Senator or Representative, or Person holding an Office of

Choice of Electors.

Trust or Profit under the United States, shall be appointed an Elector." Art. II, sec. 1, cl. 2.

Voting for President.

The electors chosen by the popular vote in November go to their respective State capitals and, on the first Wednesday in December, vote for President and Vice-President, at least one of whom shall not be an inhabitant of the same State with themselves. The electors prepare three copies of the votes which they have given. One is forwarded by mail to the President of the United States Senate, another is taken by special messenger to the same official. This must be at the National Capital before the first Wednesday in January. The third copy is deposited with the Judge of the United States District Court of the district in which the members of the electoral college meet. If for any reason it should appear dangerous or inconvenient for the electors to meet at any State capital, its legislature is empowered to fix another place where they may cast their votes. It might so happen that on the first Wednesday in December the State capital would be in the possession of a hostile army.

Votes cast on any day other than the first Wednesday of December may or may not be valid. The question has come up, but it has not been settled. In 1856 a severe snow storm prevented the electors of Wisconsin from meeting at their State capital on the day fixed by law. They voted on the following day, but when the two Houses of Congress met in joint convention, on the second Wednesday in February, to count the electoral votes there was some objection because of this slight irregularity. It was not then decided whether Wisconsin's vote was valid or invalid, for in either case Buchanan and Breckenridge were elected by a safe majority. Under different circumstances this might have caused trouble.

In the Presidential election of 1800 Thomas Jefferson and Aaron Burr received from the electoral colleges precisely the same number of votes. As the Constitution then stood, the candidate having the highest vote was declared Presi-

dent, provided the vote was a majority of all that were cast. The person receiving the next highest vote was declared Vice-President. The ballots of the electors did not specify for what office either candidate was intended. As each received seventy-three votes, neither received the highest vote. Therefore the duty of choosing a President devolved upon the House of Representatives. In such a contingency the House votes by States, the representation from each State having one vote. As is well known Mr. Jefferson was elected. To avoid for the future all danger from that source a twelfth amendment was added to the Constitution in 1804. Since that time the electors indicate on their ballots for what office each candidate is intended. Other changes in the method of electing a President were made by the same amendment. One of these will be mentioned in the succeeding paragraph.

House Chooses a President.

Twelfth Amendment.

In the election of 1824 there were four candidates for the Presidency, *viz.*:

Andrew Jackson, who received 99 electoral votes; John Quincy Adams, who received 84; William H. Crawford, who received 41; Henry Clay, who received 37. The total vote cast was 261; of this number 131 is a majority. No one of the candidates having received a majority, as required by the Constitution, the election went into the House of Representatives. By a provision of the twelfth amendment the House was compelled to choose from among the three highest on the list. This excluded Henry Clay. Before the adoption of that amendment, however, the House could choose from among the five highest. The votes of thirteen States

Plurality Does Not Elect.

were given for John Quincy Adams; seven cast their votes for Andrew Jackson, and Mr. Crawford received the votes of four. Mr. Adams was therefore declared President. The result shows that Andrew Jackson received a plurality, though not a majority of all the votes cast. The reason why a plurality should not elect is evident. There were 99 ballots for, and 162 against him.

A Plurality.

By giving him 182 votes the electoral colleges chose John C. Calhoun for the Vice-Presidency. The principal contest was for the Presidency. Had Mr. Calhoun not been thus appointed a Vice-President would have been selected by the United States Senate. This actually happened in 1837, when that body chose for the Vice-Presidency, Richard Mentor Johnson. When it is remembered that the duty of that official is to preside over the Senate the propriety of giving to that body the right to choose its own presiding officer is apparent.

Senate Once Elected Vice-President.

More celebrated and more dangerous than any of these contests was the disputed election of 1876. At that time there arose a difficulty which no one appears to have foreseen. At any rate it had not been provided for. There were double returns from Florida, Louisiana, Oregon and South Carolina. The Republican candidates were Rutherford B. Hayes and William A. Wheeler, while those of the Democratic party were Samuel J. Tilden and Thomas A. Hendricks. To settle the controversy an Electoral Commission was appointed by Congress. It was composed of five Representatives (three Democrats and two Republicans), five Senators (two Democrats and three Republicans) and five Associate Justices of the United States Supreme Court. Two of the Justices were Democrats and two Republicans;

The Electoral Commission.

these were to choose a fifth Justice. It is clear that he was to be the most important factor in the commission. To illustrate the nature of the dispute it is only necessary to cite the case of Florida.

Hayes Chosen by Party Vote.

Three returns from that State were sent to the electoral commission. That of the Hayes electors had the certificate of Florida's Governor annexed; while that of the Tilden electors had a certificate from the Attorney-General of the State; the third return was the same as the second, but it was strengthened by a certificate from the new Governor. By a vote of eight to seven the commission decided in favor of the validity of the entire Hayes electoral ticket. By the same vote, eight to seven, the commission pronounced in favor of the validity of the Hayes electors in Louisiana. The disputed return from Oregon was determined by the same vote; so also were the returns from South Carolina. The method of counting adopted by the electoral commission awarded to Mr. Hayes 185 votes, while Mr. Tilden was given 184. The former was therefore declared President. Many lawyers believe that the establishment of the Electoral Commission was not constitutional. The law which created it, however, was passed by a Democratic House and a Republican Senate.

No General Agreement as to Term of President.

By the Constitutional Convention various terms were proposed for the President. Some, though only a few, would have appointed him during good behavior. It was at first agreed that he was to serve for a period of seven years. Later this was changed to the shorter term of four years. If the Chief Executive were elected for a long period, it was feared that the struggle for so great an office might lead to considerable disturbance or even to civil war. On the other hand, the short term of

four years causes too frequent an interruption of the business of the country. In trade the Presidential year is always a dull one. Probably it would be impossible to agree upon a term that would be altogether free from objection.

President is Re-eligible.

There is nothing in our Federal Constitution to prevent successive re-elections of a President. For any legal provision on the subject he could be chosen as often as President Diaz, of Mexico, who was recently serving his seventh term. Washington refused to become a candidate for a third term; his example was followed by Jefferson, and the custom thus established has come to possess almost the force of law. Only two Presidents, General Grant and President Roosevelt, have seriously attempted to secure a third term. Both failed in their efforts.

Foreign-born Citizens in Convention.

When the Constitution was adopted there were living in the United States many naturalized citizens who had rendered during the Revolutionary era important civil and military services. Under the various State laws they were eligible to the highest official positions. They could not be expected to favor the adoption of a new Constitution that would tend to lower them in their respective communities. One great object of the Convention was to secure the adoption of the constitution that they were preparing. To do this they needed the assistance of all citizens whether of native or of foreign birth. Indeed, many of the delegates in the Convention were born outside the United States. It is necessary to name only a few of them. Hamilton, Wilson, Robert Morris, Butler and McHenry were among the ablest and the best known of the members of the Convention. Thus it happened that those who were citizens at the time of the adoption of the Constitution

(1788) were made eligible to the Presidency. As the citizens of that era have long since passed away, no one can now become President except a "natural born" citizen. That is, one who has acquired his citizenship by birth within the country. As explained in a preceding chapter there are many persons born within the United States who are not American citizens, for their parents, though residing here, are subject to the jurisdiction of some foreign state. The Constitution further requires of the President a residence of fourteen years within the country, but there is nothing to show either that the fourteen years must immediately precede his election or that it shall be a single period.

President a Natural born Citizen.

The electoral system for choosing a President seems to imply on the part of the framers of the Constitution some distrust of popular judgment and, perhaps, some fear of popular excitement. According to their theory the people were competent to elect intelligent and responsible gentlemen to act for them; because of greater knowledge and wider acquaintance with public men these gentlemen would look over the country and find the person possessing the best qualifications for the Presidential office. In other words, this select body could better judge of the fitness of men for that important position than the people could for themselves. The electors were expected to exercise, and at first they did exercise their individual judgment in choosing a President. In this way Washington was elected.

Congressional caucuses, however, soon came to nominate candidates, and that method continued up to and including 1824. During that period the Presidential electors seldom exercised any discretion. They merely voted for the candidates of the Congressional party caucus. This system would tend to confine the nomination to members of Congress and naturally would be opposed by every able and ambitious statesman outside that body. To those men it gave almost no chance to attain the Presidency.

The State legislatures next took a hand in the nomination of candidates. Many States, however, had favored sons; this would

bring about many nominations, with the result that no candidate would receive a majority of all the votes cast. This would often throw the election into the House of Representatives, and for that and other reasons the method never became popular.

National Nominating Convention.

About 1832 there came into use the present system, that of naming candidates through a national nominating convention. Since that time Presidential electors have merely registered the decrees of party conventions. In a Presidential year the great political parties hold their conventions at different times and usually at different places. In every convention the States are represented by twice as many delegates as they have Senators and Representatives in Congress. Two delegates are appointed for each Congressional district and four for the State at large. Each convention names persons for the Presidency and Vice-Presidency and also prepares a statement of its political faith. This expression of political belief is called a platform.

The Platform.

Elector Votes For Party Candidates.

This preliminary work is done early in the summer of the Presidential year, usually in June. Midsummer is spent in organizing for the campaign, which opens in earnest about October and continues to increase in activity and interest till the very eve of the election. The electors of President and Vice-President then chosen do not exercise any discretion whatever. They simply vote for the candidates named by the conventions of their respective parties. This custom has now acquired something of the force of law, and no elector ever thinks of voting for any set of candidates other than those nominated in the convention of his party.

From the preceding account it is evident that we have a *written Constitution,* which provides one method of electing a President, and an *unwritten constitution,* which appoints him in a very different manner. The national nominating convention, therefore, may be regarded as a silent amendment of this part of the Constitution.

Two Constitutions.

In another connection the subject of party government will be briefly discussed. For the present it is sufficient to state that with some minor disadvantages it combines many advantages.

By the Convention it was foreseen that the President might die during his term, and to provide for such a contingency the office of Vice-President was created. An act passed in 1791 went a step farther, and provided that in case of the death, resignation or disability of both the President and Vice-President the office should devolve first upon the president *pro tempore* of the Senate and then upon the Speaker of the House, until the disability should be removed or a new election be held. General Garfield, a newly elected President, was shot on July 2, 1881, and died in September following. The new Congress would not meet until the first Monday in December, therefore, there would be no President *pro tempore* or Speaker, and the Presidency would lapse if any accident disabled Vice-President Arthur.

Provision For Vacancies.

The matter was discussed at the time though it was not till 1886 that Congress passed the Presidential Succession Act. By this law the members of the President's cabinet succeed to his office in the following order, *viz.,* Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior. Provided, of course, that each has the qualifications that are required by the Constitution.

The Succession Act.

CHAPTER XII

THE FRAME OF GOVERNMENT

The Executive

It is universally known that every elector favored the choice of Washington for the Presidency. As stated in the preceding chapter he might have had a third term but he declined the honor. Except Monroe, when he was a second time a candidate, all other Presidents have had competitors. Indeed, of those chosen many have received a minority of the popular vote, but, of course, a majority of the electoral votes. In the election of 1860 the candidates opposed to Mr. Lincoln received collectively almost a million votes in excess of the number cast for him. Yet he received from the electoral college a decided majority. He was, therefore, what is called a minority President. In the history of the Federal Government there have been nine such Presidents.

A Minority President.

How it is possible for a candidate to have a majority of the electoral votes and yet receive a minority of the popular vote may be easily understood by considering the case of any two States, as, for example, New York and New Jersey. Let it be assumed that each of the thirty-eight Republican electors in New York receive 701,000 votes and that the Democratic electors each receive 699,000. Of course the Republican electors "carry" the State, and in the "college" cast thirty-eight ballots for the Republican candidates for President and Vice-President. Suppose further that the twelve Democratic electors in New Jersey each receive 300,000 votes and that the twelve Republican electors receive 100,000. It is clear that the Democratic electors win

the State, and in the electoral college will cast twelve ballots for the Democratic candidates. The result in the two States may be represented thus:

Republican Vote		Democratic Vote	
New York	701,000	New York	699,000
New Jersey	100,000	New Jersey	300,000
	801,000		999,000

In other words, 801,000 votes in both States win for the Republican candidates *thirty-eight* electoral votes, while 999,000 win for the Democratic candidates only *twelve* electoral votes. It is evident that the general result depends not so much on the total popular vote as upon the circumstance of its being cast in the populous States. Political parties endeavor, therefore, to get their majorities in the great States.

Success Depends on Location of Vote.

Another incident of the electoral system, the division or splitting of the vote of a State, is, perhaps, more difficult for young persons to understand. To illustrate how this may occur let us suppose that in the State of Delaware A, B and C are the Democratic candidates for electors, and that D, E and F are the Republican candidates. The result of the voting is as follows:

Splitting of Electoral Vote.

Democratic		*Republican*	
A receives	25,000	D receives	20,000
B receives	25,000	E receives	10,000
C receives	15,000	F receives	10,000

A, B and D, being highest on the list, will go to their State capital on the first Wednesday in December following the election, when A and B will vote for the Democratic candi-

dates for President and Vice-President while D, who has defeated one of the Democratic electors, will vote for the Republican candidates. This division of the electoral vote of a State is likely to occur when party strength is evenly balanced. It happens occasionally that an unpopular candidate, as C in the above list, for Presidential elector, will be defeated even though his colleagues on the ticket are successful. In 1860 the electoral vote of new Jersey was divided between Lincoln and Douglas.

Salary of President.

The compensation of the President is fixed by Congress, but that body does not possess unlimited authority over the subject, for the Constitution says that the salary of the President "shall neither be increased nor diminished during the period for which he shall have been elected." If it were in the power of Congress to increase or diminish the salary of the President during his term of office, his independence would be very insecure. One of the fundamental ideas in framing the Constitution was to make the three departments of the Government separate and distinct. In theory at least they were intended to be coördinate. If at any moment Congress could raise the salary of the Chief Executive, they might by holding out such a promise tempt a weak President to approve a law that would be injurious to the public welfare. If at any moment they could diminish it, he might fear to veto a measure which his judgment knew to be dangerous.

Independence of President.

In a word, absolute control by Congress over the compensation of the President would destroy his independence. So far, then, as concerns his salary he is independent of Congress. In 1790 the compensation was fixed at $25,000 a year; in 1871 it was increased to $50,000 and it is now, January, 1914, $75,000 per year. Besides his salary the President has the use of the Executive Mansion, popularly

known as the White House. Congress also appropriates money for illumination and fuel as well as for the maintenance of stables and the wages of a steward. In traveling by water a public vessel is usually placed at the disposal of the President.

In time of war the Executive tends to overshadow both the Legislative and Judicial branches of the Federal Government. Even in time of peace an able and enterprising President wields an influence as great as, or even greater than that of Congress. It is his power of appointment to and removal from office that makes him so potent a factor in the National Government. President Washington controlled only about seventy-five appointments, but since his time the number of persons in the service of the United States Government has increased immensely. Of Executive officials and employees there are about 236,000. Connected with the Judiciary there are 2,250 and in the Legislative branch only 1,600. In the Post Office Department alone there are now upwards of 150,000 employees. Though this vast army of officials is responsible to the President, he appoints directly only the more important of them. In the remaining departments he has the power to appoint other multitudes, and, what is not less important, the power to remove them. He appoints all military and naval officers. He also appoints and may recall the representatives in our foreign service, consular and diplomatic. The members of the Federal Judiciary are nominated, and by and with the advice and consent of the Senate appointed by the President.

Appointing Power.

Incumbents in Office.

Powers and Duties.

Except in cases of impeachment the President has power to grant reprieves and pardons for all offences against the United States. He receives ministers from foreign countries, and with the Senate shares in the treaty-making power. When the Senate is not in session he may make temporary appointments. He is empowered to convoke Congress in special session, and when the two Houses are unable to agree upon a time for adjournment, he is authorized to adjourn them to such date as he thinks proper. However, without any direction from him they can again convene on the day fixed by law. Beyond that time he can not, of course, adjourn them.

One of the most important of his functions is to "take care that the laws be faithfully executed." This was one of the great problems that confronted President Lincoln. How he met it is a matter of familiar history. Not to speak of great insurrections there is sometimes, because of mobs and riots, more or less obstruction to the execution of the laws. For their enforcement the President is empowered to use the military and naval forces of the United States.

The Veto in England.

The sovereigns of Great Britain possess, at least in theory, an absolute negative on legislation. If Parliament pass an act, the King or the Queen can veto it, and it fails to become a law. That is the end of the matter. If, however, the lawmaking body of England is keenly interested in passing a particular bill, it would be very imprudent for the sovereign to defeat the will of Parliament, because that body would find numerous opportunities for embarrassing their ruler. Since the reign of Queen Anne no English sovereign has exercised this power. Perhaps the real explanation is to be found in the fact that in 1833 the location of the sovereign power was changed and before that time it was slowly changing. Since that date the sovereignty of the state has resided in the House of Commons.

By the Federal Constitution our President is given not an absolute but a qualified negative on legislation. From the debates in the Convention and from the commentary in the *Federalist* it would seem that this power was regarded as a defensive one. It was feared by the members of the Convention that Congress might encroach on the domain of the Executive or the Judiciary: hence they armed the President with the veto. He may veto any measure that he regards as unconstitutional, any act that encroaches on the functions of his own department, on the rights of individuals or on the rights of the States. The veto is also an obstacle to hasty legislation. Indeed, the mere existence of the power has a tendency to make Congress consider more carefully any law which is submitted to the President. In almost every view of the subject this power is of very great importance.

Vote in America.

Concerning bills that have been vetoed our history shows that most of them have failed to become laws. President Cleveland sent to Congress three hundred and one vetoes, and of the measures involved almost none became laws. For the most part the acts which he opposed were pension bills and measures for the relief of private persons. General Grant used the veto power with great freedom. Though this prerogative has been used by nearly all the Presidents, Andrew Jackson was the first to employ it systematically. Andrew Johnson, too, made a spirited use of this power, but most of the bills negatived by him were passed over his objections. A careful examination of this subject would show that the veto power of the President is nearly as effective as if it were absolute.

When a bill has been passed by both Houses of Congress it is submitted to the President for his approval. He may dispose of it in one of the following ways: (*a*) He may sign it and thus show his approval. (*b*) He may keep it for ten days (Sundays not included) and though he refuse to sign it, allow it to become a law by failing promptly to

The President's Action.

return it. (*c*) He may return it with his written objections to that House in which it originated. These must be entered in full upon the Journal of that House. The bill together with these objections is then considered, and if passed by two thirds of the members, is sent with the President's objections to the other House. If after considering it this body also pass it by a two thirds majority, the bill becomes a law without the President's approval. (*d*) He may withhold his signature, but not wishing to assign reasons for his failure to sign it may simply keep the measure by him and take no action upon it. If before the expiration of ten days Congress should adjourn, the bill fails. This is what is known as the "pocket veto," and was first employed by President Jackson. It is doubtful whether this ingenious method of defeating a measure would have been approved by the framers of the Constitution. Orders, resolutions and votes to which the consent of both Houses is necessary must be submitted, just like bills, for the approval of the President.

The "Pocket Veto."

The President "may require the Opinion, in writing, of the principal Officer in each of the Executive Departments, upon any subject relating to the Duties of their respective Offices." (Art. II, sec. 2, cl. 1.) This is the only reference in the Constitution to the President's "Cabinet." The members, now nine in number, are nominated by the President and confirmed by the Senate; they are then commissioned by the President. Though personal friendship enters somewhat into their selection, there is some reference to geographical considerations in appointing them. As a rule, two members are not chosen from the same State. Yet this is sometimes done. If he so elect, the President may follow their opinions, but if he choose, he may altogether ignore them.

Three members of President Lincoln's Cabinet favored, and three opposed the admission of West Virginia as a separate State. This

important question was therefore determined by Mr. Lincoln himself. The responsibility for issuing the Emancipation Proclamation he also assumed himself. It was as to the time of its publication and the phraseology of the document that he consulted his advisers. On these matters he accepted their suggestions, but the main question he decided for himself. It is well known that President Jackson attended more to the suggestions of his personal friends in the so-called "Kitchen Cabinet" than to the advice of his constitutional cabinet. Generally the members of the cabinet serve as long as the President who nominates them. Some Executives, however, change the personnel of their cabinets very frequently. While the same political party continues to administer the Government a particularly able member may be asked to retain his office. Albert Gallatin was Secretary of the Treasury for thirteen years. As the President is held responsible for the efficient performance of his duties, it would be unjust to compel him to retain in his cabinet a secretary who had become unacceptable or who had refused to carry out the policy of the administration. For this and for other reasons Presidents have not been greatly embarrassed by being obliged to keep in their council those whom they desired to dismiss. The removal of Secretary of War Stanton, however, was one of the grounds for the impeachment of President Johnson.

Growth of Deparments.

The existence of a cabinet has been alluded to. It remains to sketch in outline the functions of the Secretaries who compose it. In Washington's cabinet there were four members, *viz.*, a Secretary of State, a Secretary of the Treasury, a Secretary of War and an Attorney-General. Since that time five other Executive Departments have been created. In the administration of John Adams provision was made for a separate establishment for the Navy, which had previously formed a division of the War Department. President Jackson invited the Postmaster-General into his cabinet. The Interior Department was created in 1849, and in 1889 the Bureau of Agriculture was made a Department. In 1903 there was established a Department of Commerce and Labor.

THE SECRETARY OF STATE, now the most important of the cabinet members, is chiefly concerned with our foreign relations. He is the only person authorized to communicate with other governments. He is in charge of consular and diplomatic representatives and has an important share in the negotiation of treaties. He is also custodian of the great seal of the United States and keeper of the national archives. He superintends the publication of Federal laws, treaties and proclamations.

THE SECRETARY OF THE TREASURY fills a position of the greatest responsibility. Indeed, the duties of that office have been arduous from the beginning. When Alexander Hamilton, the first to fill the position, began the organization of that Department, the Treasury was empty and the credit of the infant Republic at the lowest ebb. Webster has elegantly stated that Hamilton "smote the corpse of public credit and it sprang to its feet." An account of his famous series of financial measures belongs to our political history.

The Secretary of the Treasury is required to keep the public accounts and to attend to the collection and disbursement of the Federal revenue. The mint, the custom-houses and the marine hospitals are under the supervision of this department. Among its important divisions are the Bureau of Engraving and Printing and the Life Saving Service. The Director of the former superintends the engraving and printing of the currency, securities, revenue and postage stamps of the United States.

THE SECRETARY OF WAR is, under the President, the head of the army. Though all Secretaries of War are not trained army officers, all Secretaries rank higher than the general commanding the army. It should be observed that for this important position President Washington selected General Knox, an officer of experience in the Continental Army. The Secretary of War is assisted by a Commissary-General of

Subsistence, who attends to the supply of food for the army; by a Quartermaster-General, who purchases all other supplies, and by an Adjutant-General, who keeps a record of all enlistments, promotions, casualties, and discharges. The immense number of applications for pension imposes upon this official a vast amount of work.

THE SECRETARY OF THE NAVY has many duties to perform. He has charge of the construction of ships of war. This work is entrusted to a Bureau of Construction and Repair. He maintains the force and gives orders to the officers. He also has charge of the naval observatory, located in Washington, and publishes the nautical almanac.

THE POSTMASTER-GENERAL, as already remarked, did not become a member of the cabinet till the administration of General Jackson. An official performing similar functions, however, was known to the American people under the Articles of Confederation. According to the amount of business transacted by them, all the Post Offices of the United States are divided into four classes. Of the first three there are about 4,000 and their postmasters are appointed directly by the President. The Postmaster-General appoints about 70,000 others. It is scarcely necessary to add that he has far greater patronage than any other head of department. The nature of his duties is well understood, and it is equally well known that the Post Office Department, though conducted by the Government, is not managed for profit. Its successful management is used by socialists and some others as an argument in favor of the Government ownership of railways, telegraph and telephone lines and similar enterprises.

The names of the bureaus of the INTERIOR DEPARTMENT indicate the variety and importance of the duties performed by its Secretary. The Commissioner of Public Lands, the

Commissioner of Pensions, and the Commissioner of Patents are each in charge of important public offices. More recently than these has been established a Bureau of Education; there is also the Geological Survey. To advise the Secretary in passing upon questions of pension law, patent law, mining law, land law and Indian treaties there is provided a special assistant attorney-general.

THE ATTORNEY-GENERAL is the legal adviser of the President and of the other heads of departments. He also represents the United States in all suits to which they are a party. To relieve him of a great amount of pleading and of legal investigation there are provided several assistant Attorneys-General and a Solicitor-General. Though there was an Attorney-General in Washington's cabinet, the DEPARTMENT OF JUSTICE was not organized till 1871.

A BUREAU OF AGRICULTURE has existed since 1862 but it was not till 1889 that it was raised to the rank of a department. It sends seeds as well as information concerning them to such farmers as apply for them. This great public service has been somewhat abused by wasteful methods of distribution. The department supervises the inspection of meats that are intended for the export trade; it likewise conducts experiments with plants in order to ascertain what variety gives the best results. For this purpose there are experiment stations established throughout the country. Its most important divisions are: the Weather Bureau, the Forestry Division and the Bureau of Animal Industry.

THE DEPARTMENT OF COMMERCE AND LABOR was created in 1903. Its Secretary has charge of corporation accounts and is chiefly engaged in collecting statistics, making investigations and preparing reports. Recently there has been created a Department of Commerce and a Department of Labor.

Besides these Departments there are in the Executive

branch of the Federal Government several very important commissions, *viz.*: The Industrial Commission, The Interstate Commerce Commission and the Civil Service Commission. The nature of each of these as well as the organization and functions of the several Departments may be easily learned from an examination of the Congressional Directory, a publication easily obtainable.

CHAPTER XIII

THE FRAME OF GOVERNMENT

"THE Judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receives for their Services a Compensation which shall not be diminished during their Continuance in Office." Art. III, sec. 1, cl. 1.

The Constitution, it will be observed, mentions "a supreme Court." The organization of that tribunal, however, is left to Congress; to this body is also granted the power to create such inferior courts as appear to be required. With the tenure of office of the judges in both the supreme and inferior courts Congress has nothing whatever to do, for by virtue of the constitutional provision all Federal judges continue in office during good behavior. To strengthen still further the independence of the Judicial Department it is provided that the salaries of the judges cannot be diminished while they remain in office. It will be remembered that, on the other hand, the salary of the President can neither be increased nor diminished during his term of office. The explanation of this difference is that the compensation which is adequate for a President at the beginning of his term will be sufficient at the end of four years. In the case of a judge, however, the salary that is sufficient

Duties Imposed on Congress.

Independence of Judiciary.

when he takes office may be very inadequate twenty or thirty years later. In that period the cost of living increases greatly. Chief Justice Marshall presided in the United States Supreme Court from 1801-1835. In the circuit courts judges have served upwards of forty years, and in at least one instance a judge has served fifty years.

Tenure in the States.

Unlike the Federal system, in which the judges are appointed by the President, by and with the advice and consent of the Senate, and in which they hold office during good behavior, the State judiciaries are elective and the judges thereof hold office only for a period of years. To this rule there are a few exceptions. Massachusetts, for example, appoints judges during good behavior. In other words, the judicial system of that Commonwealth is like the Federal system. If the courts of that community are not the very best in the Union they are at least equal to the best.

Exceptions.

District Courts.

By virtue of its constitutional authority Congress has established in each commonwealth at least one District Court. New York has four and Pennsylvania three such tribunals. Many States have two, and in the entire Union there are about eighty. Portions of different States are never combined to form a judicial district, each State having one or more district courts.

The officials of the United States district courts are: a judge appointed by the President by and with the advice and consent of the Senate; a marshal, who executes the processes of the court, and whose office corresponds to that of a sheriff; a clerk, who is the custodian of a seal, who issues writs and keeps a record of the business of the court; there is also a District Attorney. This officer prosecutes all offenders against Federal laws and represents the United

States in all suits to which it is a party. In the United States district courts the judges alone hold office during good behavior.

Circuit Courts.

Just above the district courts in the Federal system are the Circuit Courts: of these there are nine. In some of the circuits several States are included. Pennsylvania, New Jersey and Delaware, for instance, form the third circuit. To each of the nine circuits into which the United States are divided a justice of the Supreme Court is assigned, and in every district in his circuit he must preside at least once in two years. Besides the nine justices who go out from Washington there are circuit judges residing permanently in each circuit.

Circuit Courts of Appeals.

Ranking still higher than the circuit courts are tribunals known as Circuit Courts of Appeals; these also are nine in number; they were established, only a few years ago, for the purpose of relieving the United States Supreme Court of a part of the great amount of litigation that claims its attention.

The United States Supreme Court.

As stated in the preceding pages, Congress is required to organize the Supreme Court; that is it determines among other things the number of justices that are to constitute that tribunal and fixes their compensation. At first there were five justices in the Supreme Court; at a later epoch there were ten, and now there are nine, *viz.*, a chief justice and eight associate justices.

The principal officials of the United States Supreme Court are a reporter, who prepares for publication the decisions of the court, a clerk, whose duties are similar to those of the clerk in a district court, a marshal and a stenographer. In this as in all Federal courts the justices alone held office during good behavior. The court appoints the officials referred to.

Other Officials.

The United States Supreme Court is not only one of the most characteristic of American institutions but also one of the most useful. It would be difficult to overestimate the value of its services to the American people. There are few elements in our population who do not acknowledge its worth. During its entire career it has met with but little opposition from the Presidents or from Congress. At the beginning of the nineteenth century, it is true, it was not regarded with much favor by the political party then in power, and again during a part of the Reconstruction era (1865-1877) it was criticized by Congress. Fortunately, it passed successfully through both trials and now appears to be more firmly established in public confidence than it has ever been.

In all cases in which a State is a party the Supreme Court has original jurisdiction; that is, it has the right to determine such cases in the first instance. The same is true of all cases affecting ambassadors, other public ministers and consuls. In all other cases the supreme court has only appellate jurisdiction. That is, it can adjudicate such cases only after they have first been tried in some inferior court.

Jurisdiction.

Even very young pupils are aware that each State has a judicial system of its own, and they may be puzzled to know what necessity there was for establishing a Federal system. They should first be informed that the provision for a Federal judiciary was one of the important changes proposed by the Constitution. Our first chapters made it plain that there existed at the time of the Treaty of Paris,

Power of Supreme Court.

in 1783, the greatest confusion. Indeed, it is well known that the brief interval till 1787 was beginning to be marked by symptoms of anarchy. Perhaps the gravest danger was to be apprehended from the quarrels between the States. The Articles of Confederation, it is true, provided for national courts of three kinds, but these tribunals were subject to the jurisdiction of Congress. Under the Constitution the judicial department was made independent of Congress. It can hear not only Federal cases but appeals from the State courts. It can also veto or disallow State laws as well as national laws. The inability to restrain State legislation was one of the fundamental defects in the Articles of Confederation.

Besides the system of Federal courts just described there have been established special tribunals. There is a Court of Customs Appeals; also a Court of Claims, which meets annually in Washington.

There are still other national courts but they are outside the judicial system just explained. Such are the territorial courts, the courts established in our dependencies and the courts of the District of Columbia.

Sec. 2 of Art. III states that: "The judicial Power shall extend . . . to Controversies between a State and Citizens of another State." An examination of this and the succeeding portion of section 2 makes it appear that a citizen of one State can bring suit against another State, and soon after the establishment of the Government under the Constitution this was actually attemped by Alexander Chisholm, of South Carolina, who brought suit against the State of Georgia. A majority of the Justices of the Supreme Court held that under the Constitution he possessed that right. From their opinion, however, Justice Iredell dissented, and his reasoning is of great historical interest because it subsequently became the legal basis for the Eleventh Amend-

ment, which is as follows: "The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by the Citizens or Subjects of any Foreign State." This provision of the Constitution is regarded by some competent critics as a source of grave danger in that it is opposed to a just and enlightened public policy, because it enables a State to repudiate its debts. This might cause dissatisfaction among the citizens of other States and incur for all the States the hostility of foreign powers. This amendment became a part of the Constitution on January 8, 1798.

Treason Defined.

The third section of Article III defines treason and describes the testimony necessary to convict a person accused of that crime. All governments possess the power to punish treason. It might, therefore, seem that it was unnecessary to state what no one would be likely to deny. That is, that the American state could protect itself by punishing those who attempted to destroy it. It is really a limitation upon the Government and a protection to the citizen, for it is not left to Congress, to the President, or even to the Judiciary to determine whether a particular offense is treason. It is clearly stated in the Constitution that treason against the United States shall consist "only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort." If the nature of treason were left vague, it would be possible for any administration to regard seditious speeches or even newspapers criticims of its policy as treasonable in character, and to punish them as if they were really treason. In the past this had been a terrible instrument of oppression. By clearly defining treason and by describing the testimony necessary to convict the person accused the rights of the people are made more secure.

When his term as Vice-President was about to expire Aaron Burr conceived the idea of seizing the branch of the United States Bank at New Orleans, revolutionizing the Louisiana country and establishing somewhere in Texas, then a Mexican province, a government of which he would be the head. To effect this object he caused to be assembled on an island in the Ohio river, and in the jurisdiction of Virginia, a force of about twenty-six men. In due time the expedition floated down the Ohio and on into the Mississippi. At Memphis it was stopped, but before the party went on shore the arms were sunk in the river. Burr was there given a hearing before the United States authorities. It appears that he attempted soon after to leave the country; was arrested and brought to Richmond, where he was tried for treason before Justice Marshall and acquitted.

Opinion of Marshall.

In his opinion in the case of Aaron Burr, Marshall made clear several questions that arose, *viz.*: (*a*) That the mere enrollment of men for such an enterprise as Burr's would not constitute treason. The men should be actually embodied, that is, brought together at some point. (*b*) It should further be shown that Burr was personally present or at some place where he could easily assume command of the expedition after it had started. (*c*) That the means at his disposal should bear some reasonable relation to the end to be accomplished. Each of these points and others not mentioned should be established by the testimony of two witnesses.

In declaring the punishment of treason, as by the Constitution it is empowered to do, Congress abandoned the barbaric method recognized by the common law of England. The penalty of treason it declared to be death by hanging. An eminent authority (Pomeroy, *Constitutional Law*, p. 277, *ed.* 1881) thus describes the terrible severity of the old law: "The offender was to be drawn to the gallows; hung by the neck, and cut down alive; his bowels were to be taken out while he was alive, and burned; he was then to be beheaded and his body quartered." According to the

traditional phrase the traitor was hanged, drawn and quartered. In the latter part of the constitutional provision there is a prohibition to the effect that "no attainder of treason shall work corruption of blood." This can have no reference to that part of the Constitution which prohibits Congress from passing any Bill of Attainder. This was merely legislative trial, conviction and punishment. Such laws can be passed by neither a State Legislature nor Congress. The present provision, therefore, must have reference to judicial sentence. Corruption of blood is altogether abolished. By that expression is meant the destruction in a person of every inheritable quality. The person attainted could not succeed to any lands that otherwise might come to him, nor could any person inherit through or from him. The Constitution allows forfeiture of estate during the life of the person attainted.

Corruption of Blood.

The case of John Brown shows that it is possible to commit treason against a State. In October, 1859, Brown seized by an armed force the arsenal at Harper's Ferry; he then attempted to promote insurrection among Virginian slaves. He was tried, convicted and in December following was hanged.

In the Civil War citizens of the Southern States in levying war against the United States were merely obeying the decrees of their various commonwealths. In this they were guilty of treason against the United States. On the other hand, if they had borne arms for the Federal Government against their respective States, they would have been guilty of treason against the seceding commonwealths. This point of view is clear enough: the ordinances of secession, it was claimed, took the States out of the Union. The people of those commonwealths, therefore, no longer owed allegiance

Citizens of the South.

to the United States and therefore could commit no treason against what remained of the old Union. Outside the limits of the Confederate States it was generally, though not universally, held that the ordinances were of no effect to take those States out of the Union. Their hostile populations therefore were guilty of treason against the United States* even if they obeyed the decrees of their own commonwealths.

* Political science teaches that American citizens are in reality not citizens of the Federal government or of the State governments, but of the *state* (the sovereignty) that lies back of both systems of government.

CHAPTER XIV

THE FRAME OF GOVERNMENT

"FULL Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; and the Congress may, by general Laws, prescribe the Manner in which such Acts, Records, and Proceedings, shall be proved, and the Effect thereof." (Art. IV, sec. 1, Cons. of U. S.)

Inter-State Comity.

In theory the States are independent of one another, and the laws of one commonwealth cannot be enforced in another except as provided by the Federal Constitution. Congress is empowered to make laws on this subject, and it has done so. This part of the Constitution, as well as the three clauses of the following section, was designed to promote interstate comity. Indeed, it is older than the Constitution, for it is taken almost word for word from the fourth of the Articles of Confederation, where, with other provisions, it was included "to secure and perpetuate mutual friendship and intercourse among the people of the different States" in the Union.

Section two of the same Article declares that "The Citizens of each State shall be entitled to all Privilges and Immunities of Citizens in the several States." We have nowhere any complete enumeration of these privileges and immunities, and once more are compelled to seek an explanation in the history of the United States. Turning to the fourth of the Articles of Confederation, we find that

"the free inhabitants of each of these States . . . shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all

the privileges of trade and commerce subject to the same duties, imposition and restrictions as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant."

Privileges of Citizens.

When Missouri applied for admission to the Union her constitution contained a provision which excluded from her jurisdiction free persons of color. There were many slaves in that territory and the admission of free negroes, it was feared, would tend to make them restless; hence the provision for the exclusion of free blacks. Until her Legislature promised not to enforce this part of the State constitution Missouri was not admitted. From the discussions of that period (1820) it is clear that the "privileges and immunities of citizens in the several States" include the right to enter any State, to pursue therein a lawful calling, to leave such State and to remove one's property to another commonwealth.

As mentioned above, this Article of the Constitution is concerned with the preservation of harmony among the States. In theory they are to dwell in the Union as helpful and affectionate sisters. It is the duty of each member of this confederation to act courteously toward every other, and though this obligation might be inferred from the circumstances of our origin as a distinct people, it has been preserved in the fundamental law, which says that:

"A Person charged with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the Executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." (Art. IV, sec. 2, cl. 2.)

This provision is very generally observed. The usual procedure in the extradition of a criminal who has fled from the State in which he committed the offence is to bring the matter officially to the attention of the Governor of that State; he sends a "requisition" to the Governor of that commonwealth in which the fugitive is found. This official then gives permission to have the alleged offender taken out of that State. Governors may or may not surrender a fugitive. Sometimes they refuse, and when they do there is no means of compelling them to perform that duty. Breaches of interstate comity, however, are not very frequent. If a Governor personally dislikes another, he may refuse to honor a requisition; if the executive authority is persuaded that the alleged offender, if returned by him, would be in danger of being given a partisan trial, he may refuse to surrender the fugitive.

Extradition.

Tending toward the same end is the next clause, which provides that:

"No person held to Service or Labor in one State under the Laws thereof, escaping into another, shall in consequence of any Law or Regulation therein, be discharged from such Service or Labor; but shall be delivered up on Claim of the Party to whom such Service or Labor may be due." (Art. IV, sec. 2, cl. 3.)

From the time of the earliest plans for a union of the English colonies in North America there have been similar provisions in the fundamental law. It should be observed that this regulation applies as well to apprentices as to slaves. In colonial times and in the early national period the services of an apprentice were regarded as very profitable, and when one escaped, a large reward was offered for his return.

More interesting, and because of its history more important, is the question of returning fugitive slaves. In Washington's administration a law was passed upon this subject,

but its execution, so far as there was any attempt to enforce it, attracted little attention.

In consequence of the War with Mexico a vast territory was acquired in 1848. The character of this territory in the Union, that is, whether it should be devoted to slavery or to freedom gave rise to heated discussions in Congress as well as outside. Threats of secession and disunion were frequently made and sectional feeling ran high. To set at rest this agitation an agreement between the North and South was finally reached. Its provisions are known collectively as The Compromise of 1850. Its principal authors, all lovers of the Union, were Clay, Calhoun and Webster, and it was designed to last forever. The subsequent history of this celebrated bargain belongs to the political annals of the United States. Here we are concerned with only one of its provisions. The North was pleased to find that by this compromise the slave trade would be abolished in the District of Columbia and that California would be admitted as a free State. The South was generally satisfied to find that nothing injurious to the institution of slavery was done with respect to New Mexico and Utah; that Texas, a southern State, was to receive $10,000,000 for surrendering to the United States her claims to certain territory on the upper Rio Grande River, and also for giving up to the Federal Government her custom houses and other sources of revenue. But the South was still more interested in the new Fugitive Slave Law. For that section the cheerful enforcement of this measure had the chief interest. As soon as Southern slave owners or their representatives went into Northern States to recover their runaway slaves there was trouble. The people of the free States were opposed to the return of escaped negroes, and in many Northern States laws were soon passed that made it difficult for an owner to take back his slave. This was a violation of the Compromise of 1850, but it was in agreement with the feelings of many people in the free States. When a master or his attorney obtained possession of a fugitive slave, it was almost impossible to take him South. In the case of Anthony Burns, captured in Boston, it required the police force of the city, some companies of militia and battalions of marines from a warship in the harbor to get him on board ship. Burns was finally taken back to Virginia, but it cost the United States Government a sum estimated at from $80,000 to $120,000 to get him through the streets of Boston. It is clear that Northern sentiment made this an expensive law to

enforce, and the failure of the North to live up to this part of the agreement was one of the causes of the Civil War.

Room for New States.

The framers of the Constitution were aware that there were vast tracts of uncultivated land on both banks of the Ohio. These fertile regions, they well knew, were certain to be settled. Indeed, the Revolutionary War was scarcely ended when enterprising people began to make new homes in the rich valleys beyond the Alleghanies. It was to provide for such communities as might spring up in that region that the Constitution provided for the admission of new States. In 1787 few people expected the young Republic to acquire the vast domain beyond the Mississippi.

"New States may be admitted by the Congress into this Union: but no new State shall be formed or erected within the Jurisdiction of any other State, nor any State be formed by the Junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress." (Art. IV, sec. 3, cl. 1.)

In 1820 Missouri was admitted into the Union as a slave State. To balance this the District of Maine, which had hitherto been a part of Massachusetts, was organized as a separate commonwealth and came into the Union as a free State. This was the first instance of a division of one of the old States. In order to effect this separation it was necessary for the people of Maine to obtain the consent of the Massachusetts Legislature as well as of Congress. The erection of Maine into a separate State had been discussed before but on every submission of the question to the voters of Massachusetts it was defeated. In 1820, however, State pride yielded to a sectional demand for another free State and, in consequence, Maine became an independent State. Virginia also has been divided. In order to do this it was necessary to obtain the consent of the Legislature of Virginia and of Congress. In normal times this could never have been accomplished, and though the erection of a separate State within the commonwealth of Virginia was effected in time of war, there are very many intelligent people who question the legality of some of the steps that were taken.

At the time that West Virginia applied for admission to the Union there were ten States wholly unrepresented in either House of Congress. One Senator, Andrew Johnson, represented Tennessee until March, 1862, when he was appointed Military Governor of his State. A Representative from Louisiana also remained in his place when the delegation from his State withdrew from Congress. In a Congress where eleven States were unrepresented there was some opposition to the admission of Senators and Representatives from West Virginia, on the ground that no such State existed. So much for the consent of Congress. While it was not the same as the Congresses in which all the States were represented, yet it was a perfectly lawful body and its acts have been regarded as constitutional. The student should remember that all the States could have been represented if they so desired.

The Constitution requires not only the consent of Congress but that of the State Legislature. Did the Legislature of Virginia consent to a division of the "Old Dominion"? This is a very important inquiry, and according to one's political sentiments may be differently answered. The facts may be briefly related. The greater part of the wealth and population of Virginia was represented in a Legislature at Richmond. That assembly was hostile to the United States and gave its support to the Confederate States. That body never gave its consent to divide the commonwealth. There was, however, a very considerable minority of the people of Virginia represented in an assembly at Wheeling, in the western counties. This was the Legislature that gave its consent to the creation of a new State. Some held that the assembly at Wheeling was not the lawful Legislature of all Virginia. However that may have been, it was the one which the United States recognized. Indeed, it could not recognize an assembly hostile to itself.

Enabling Act.

In the admission of new States the usual mode of procedure is for Congress to pass an "enabling act." This prescribes the boundaries of the proposed State, authorizes its people to frame a constitution, and to elect certain officials. When these conditions have been complied with the State is admitted, if the constitution creates a government that is republican in form. In all cases enabling acts have not been

required by Congress. None was passed in the case of California, which was admitted in the autumn of 1850.

An Act of February 2, 1872, provided that no State shall be admitted into this Union "without having the necessary population to entitle it to at least one Representative according to the ratio of representation fixed by this bill." Like the enabling act an adequate population was not always insisted upon. Nevada, though long a member of the Union, has even now only a fraction of the population necessary for one Representative in Congress. Party considerations have often influenced the admission of new States.

Republican Form of Government.

It has just been stated that when the people of a territory adopt a constitution and present themselves for admission into the Union, Congress can require that the government be republican in form. What is "a republican form of government" in the meaning of the Constitution? If we regard the words in their literary sense, a republican form of government might be defined as one in which political power is vested in a majority of the people. Art. IV, sec. 4 of the Constitution says that, "The United States shall guarantee to every State in this Union a republican Form of Government, and shall protect each of them against Invasion; and, on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

It should be observed that Congress alone is not to guarantee a republican form of government, that the Executive is not to do so nor the Judiciary. It is the United States that must do so: that is, the three departments. In the course of the Civil War when the Confederate State governments were overthrown it became the duty of one of the departments to see that they were superseded by governments republican in form. It was to this clause that both Congress and the President appealed, but each claimed that the work

pertained to itself. Mr. Lincoln took up the task of restoring the Confederate States to their former relations in the Union, and, in a manner entirely his own, President Johnson followed out the plan that had been adopted by his predecessor. Congress, however, felt that the work of reconstructing the Union belonged not to the President but to itself. This difference of opinion was one of the causes of President Johnson's impeachment, because Congress felt that he was thwarting them by his vetoes as well as by other executive acts.

Congress and President Not Agreed.

One very able statesman of that period has said that a State has a republican form of government *if it supports the Constitution of the United States.* In other words, loyalty determines whether the government of a State is republican in form. In some of the Congressional debates the principle was emphasized that the government of a State is republican in form if its Senators and Representatives are admitted into Congress. For the present the student must be content with these explanations of the expression "republican form of government."

Loyalty Is the Test.

CHAPTER XV

POWER OF AMENDMENT

One of the most serious defects in the Articles of Confederation was the difficulty of their amendment. In practice it was found impossible to alter them, for no modification was valid unless approved by every State. There were many efforts to improve the Articles but to every such proposal at least one State objected. It is clear that under such a sysem it was always in the power of one commonwealth, perhaps an insignificant one, to block the way to progress. This experience was not forgotten by the delegates in the Constitutional Convention, and the document framed by them established what is often called the American principle, that is, majority rule. By the Constitution it is provided that a majority of the States may impose their wishes upon an unwilling minority. In fact, this has been done. There are amendments which certain States have never ratified. Nevertheless, these amendments are binding upon the States that rejected as well as those that ratified them.

Majority Rule.

There are two methods of proposing amendments and also two methods of ratifying them. These are most concisely set forth in the Constitution itself—Article V.

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which in either Case shall be valid to all Intents and Purposes as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as one or the other mode of Ratification may be proposed by the Congress,

provided that no Amendments which may be made prior to the Year one Thousand eight Hundred and eight shall in any manner affect the first and fourth clauses in the ninth Section of the first Article: and that no State, without its consent, shall be deprived of its equal Suffrage in the Senate."

With the exceptions stated at the end of Article V the Constitution can at any time be amended. The first of these limitations prevented Congress from passing any law prohibiting the importation of African slaves before January 1, 1808. Direct taxes were to be laid not according to the number of acres in a State or according to its estimated wealth but "in proportion to the Census or Enumeration hereinbefore directed to be taken." In other words, taxes were to be laid in proportion to population.

A Rigid Constitution.

In practice two thirds of Congress have proposed amendments and the Legislatures of three fourths of the States have ratified them. Though the mode of amendment is simple enough, yet only seventeen amendments have been adopted out of the thousands that at different times have been suggested. This difficulty of amendment makes our Constitution what is technically called a rigid one.

The Three Fourths Principle.

In 1787 the Union consisted of thirteen States. Of this number nine is, approximately, three fourths. Article VII provides that "The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." In other words, the Constitution became binding when ratified by three fourths of the members of the Union, and that is still the rule. Amendments, in whichever manner proposed, become valid upon the ratification of three fourths of the commonwealths in the existing Union. It should be observed, however, that the original

Constitution became binding upon only those States that ratified it. This made it possible for four of the thirteen to remain outside the proposed Union, and it is a well-known fact that two of them, Rhode Island and North Carolina, refused at first to enter the new confederacy.

But one Article (VI) of the original Constitution remains to be considered. Its first clause disclaims any purpose on the part of the United States to repudiate its debts. The nation intended to change its political organization but meditated no act of dishonesty. Debts against the United States under the Confederation were to be as valid as if incurred under the Constitution; the same is true of other engagements.

No Repudiation.

The second clause of the same Article declares that "This Constitution, and the Laws of the United States which shall be made in pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." It further declares that the Judges in every State shall be bound by the Constitution, even if State laws or State Constitutions are in conflict with it.

Supreme Law of the and.

An oath or an affirmation to support the Constitution is required of all lawmakers, State and Federal, and of all executive and judicial officers both of the United States and of the several States; but "no religious test shall ever be required as a qualification to any office or public trust under the United States."

By the *schedule* is meant all those provisions which facilitate the transfer from the old order to the new. If the government under the Constitution would refuse to pay the debts contracted under the Articles of Confederation, every

creditor of the old Government would oppose the adoption of the new Constitution. The Schedule is a more important part of State constitutions.

As the schedule is made up of only temporary provisions, it need not be included in the Constitution, for the same end could be reached by an act of the existing legislature. We have now examined briefly the Preamble, the Frame of Government and the Schedule. Of the grand divisions of the Constitution only the Bill of Rights and the Civil War Amendments remain to be noticed.

As stated in an earlier chapter, there were in the Constitutional Convention delegates who refused to sign the new frame of government because it contained no Bill of Rights. Almost everywhere in America a Bill of Rights was then regarded as an indispensable part of a constitution. It was deemed necessary to safeguard the liberty of the people. By many influential leaders its absence from the Federal Constitution was pointed out as a fatal defect. Leaders so able as Madison and Hamilton believed that no Bill of Rights was necessary. On the other hand, Jefferson insisted on securing it. In fact, in a letter from France he recommended the adoption of the Constitution by nine of the States; the remaining four he advised to withhold ratification until a Bill of Rights had been added to it. Those who favored the proposed Constitution were known as Federalists those opposed to it were called Anti-Federalists. The former party yielded to the latter.

Bill of Rights.

The First Congress proposed ten Amendments, and they were soon ratified by the States. These amendments are known as the Bill of Rights. The name is derived from a document signed in 1689 by William and Mary. The people of England had driven out of the kingdom a Catholic king, James II, whom they charged with frequent violation of certain laws. They next invited into the country William, Prince of Orange, the son-in-law and nephew of James. In 1688 he landed in the western part of the island and soon after was proclaimed king. His wife, Mary, became queen. They first

agreed to the Declaration of Rights. The body which proposed this measure was a revolutionary body. Soon after it called itself a Parliament and then enacted the celebrated Bill of Rights. It will be found interesting to compare this famous document with the first eight amendments of our Constitution.

In the present survey of the Constitution there is not sufficient space to examine separately each of these amendments. The more important may be briefly noticed.

I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and petition the government for a redress of grievances."

In this amendment there are three distinct restraints upon the power of Congress. The first and the last of these limitations it has always respected. The second, freedom of speech and of the press, has given rise to much controversy. Toward the close of President Washington's second term the Government was bitterly assailed by writers and speakers who opposed the administration. During the term of John Adams these attacks were kept up. Congress, therefore, passed a bill to restrain the authors of these intemperate attacks. This was the famous Sedition Law. Under its operation a number of citizens were fined and imprisoned for their speeches and writings. A protest came from Virginia and another from Kentucky. The resolutions of the former legislature were prepared by James Madison, the father of the Constitution. Jefferson was the author of the Kentucky Resolutions. Both States took the ground that the Sedition Law, by abridging freedom of speech and of the press, was an evident

The Sedition Law.

The Virginia and Kentucky Resolutions.

violation of the first amendment. Writers on constitutional questions are now of the opinion that this law was unconstitutional. With the remedies proposed by these statesmen we are not now concerned further than to observe that the Virginia and Kentucky Resolutions of 1798 and 1799 furnished a basis for the nullification of 1832. This is one of the most interesting and important subjects in American constitutional history, and for its complete treatment a volume would be required. This chapter can barely remark that if freedom of speech and of the press mean anything, they give the citizen a right to examine all measures of government; to praise them when they deserve commendation and to criticize them when they deserve censure. The political party responsible for the passage of the Sedition Law lost the Presidential election of 1800 and after the War of 1812 disappeared as an organization.

Second Amendment.

The English Bill of Rights provides "That the subjects which are Protestants may have arms for their defence suitable to their conditions, and as allowed by law." In our Constitution, Amendment II, it was declared that "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." Concerning this provision it is only necessary to observe that by the term militia is not meant the familiar organizations that are uniformed, armed and drilled. These bodies are known as the National Guards, and are found in every State. They comprise only a part of the militia. By that term is meant, in most commonwealths, all able-bodied male citizens between the ages of seventeen and forty-five years. From this part of the population many States except certain classes, as for example, teachers and clergymen.

Militia Defined.

The THIRD AMENDMENT has reference to the quartering of soldiers upon the people. It provides that "No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law." In the exciting times preceding the Revolutionary War "the consent of the owner" was not required for the quartering of British soldiers upon the people of Boston. They regarded the "Quartering Act" as one of the intolerable measures, and its enforcement contributed greatly to increasing their hatred of the mother country.

The FOURTH AMENDMENT, which is concerned with search-warrants, or general warrants, was suggested, no doubt, by the Massachusetts Writs of Assistance as well as some older English history. It seems to require no commentary.

The group of provisions known as the FIFTH AMENDMENT is not so simple. Persons accused of capital or otherwise infamous crimes can be tried only on a presentment or indictment by a grand jury. Naval courts and military courts provide for the trial of offenders in the army and navy. The proceedings of both, especially of courts martial, are familiar. Further it provides that no person shall be "deprived of life, liberty, or property without due process of law." The phrase due process of law has a technical meaning. It does not, for instance, in every case guarantee a trial by jury. It does, indeed, where a jury trial is the usual method of determining a case. In the proceedings in an admiralty or in an equity court a person may be deprived of his property without a trial by jury. He cannot, therefore, contend that he has been denied the benefits of this Constitutional provision, for trial by jury is not the usual method in these tribunals.

Indictment.

Due Process of Law.

"Nor shall private property be taken for public use without just compensation." This is not intended to prevent the laying of a tax, which is a portion of private property taken for public use, but has reference rather to the right of Eminent Domain. Under this principle land may be taken for the use of streets or highways. In time of war a commander could by reason of this right destroy a fence or a barn for the purpose of constructing a bridge over a stream that could not otherwise be crossed by his army; he could take horses or wagons for the use of his troops. In every case compensation must be given. Some authorities go so far as to assert that under the right of Eminent Domain money could be taken. Cases may be imagined where in the past it would have been of considerable advantage to do this. The present system of public finance does not look to the exercise of this right as a source of revenue.

Eminent Domain.

Article VIII (of the Amendments) says that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Precisely at what point bail may become excessive is probably laid down in no work on law. If, for example, a laborer or a mechanic accused of crime should be required to furnish $20,000 or even $5,000 bail, the amount might fairly be considered excessive. It would not be so regarded in the case of a Rothschild or a Rockefeller. This matter must be left largely to the discretion of the court. The same observation is true of fines imposed. In certain stations in life a fine of $5,000 might prove a burden during a long life.

Excessive Bail.

Excessive Fines.

It is highly probable that the limitations in the Bill of Rights were intended to apply not to the several States, for their constitutions contained similar provisions, but to the three departments

of the Federal Government. The political history of the era immediately following the Revolution leads to the same conclusion. The people knew and trusted their State governments, but they could not foresee what the General Government might become, and what was more natural than an attempt to hold it in restraint?

Concerning Amendments IX and X it is only necessary to observe that between our Congress and the British Parliament there is a profound difference. The latter, in theory at least, can pass laws upon all conceivable subjects, that is, its legislative power is boundless, whereas that of the Congress of the United States is exceedingly limited. It can pass laws only upon the seventeen groups of subjects enumerated in section 8 of Article I and such additional laws as may be necessary to give them effect. For example Congress can borrow money upon the credit of the United States. By reason of this grant of power it can authorize the Secretary of the Treasury to borrow, say, the sum of $50,000,000. This he may do by offering for sale United States bonds. If it were deemed necessary to create a new office for the purpose of obtaining the money promptly and on reasonable terms, Congress could pass another law creating the new office and fixing the salary of its head and of as many clerks as were deemed necessary for its administration. As compared with the British Government, our Federal Government is one of very few powers.

Reserved Rights.

The preceding amendments secure to the people certain rights, but this is by no means a complete list, for Article IX says that "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." Finally it is declared that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Amendment X. The reserved powers of the States is an intricate subject, and one beyond the grasp of school children. In another connection both the FOURTH and ELEVENTH Amendments have been discussed. The succeeding chapter will treat of the Civil War Amendments, *viz.* Articles XIII, XIV and XV.

CHAPTER XVI

THE CIVIL WAR AMENDMENTS

IN December, 1865, the Thirteenth Amendment became a part of the Constitution. It provides that "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or in any place subject to their jurisdiction."

Slavery Abolished.

In an early chapter it was stated that our Constitution was of slow growth. As will presently appear, the language of the Thirteenth Amendment was not new in 1865. On July 13, 1787, the Congress under the Articles of Confederation passed "An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio." Of that celebrated law section VI begins, "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes, whereof the party shall have been duly convicted."

More than three score years later, 1848, when the southwestern part of the United States was acquired from Mexico, Representative David Wilmot, of Pennsylvania, sought to prohibit slavery in all that section. His amendment of an appropriation bill was a slight modification of section VI of the Ordinance of 1787. Though his famous Proviso, or amendment, failed to pass Congress, it gave rise to exciting debates. In the country outside it was discussed in a very animated way. The agitation thus occasioned was set at rest by the compromise measures of 1850, sometimes called the Omnibus Bill.

It will thus be seen that the phraseology of the Thirteenth Amendment, which was that of the Ordinance of 1787 and also that of the Wilmot Proviso, was familiar to the American people in 1865. Indeed, even before 1787 it was known and has since been called "the Jefferson interdict," because a few years before 1787 it had been proposed by Mr. Jefferson to prohibit slavery in the Northwest Territory, and this was his language. This historical digression may be briefly summarized:

Ordinance of 1787.

The Ordinance of 1787 (section VI) prohibited slavery in the territory northwest of the Ohio River; the Wilmot Proviso sought to prohibit slavery in the Mexican cession (1850): the Thirteenth Amendment applies the prohibition not only to the entire Union but to every place that the United States may acquire. The Thirteenth Amendment may therefore be regarded as the general application of a principle that had long been familiar.

Wilmot Proviso.

Necessity for Thirteenth Amendment.

It has been said that this amendment became a part of the Constitution in 1865, and it may not be perfectly clear to young students why, after President Lincoln's Emancipation Proclamation, which became operative January 1, 1863, it was necessary to adopt any amendment whatever upon the subject of slavery. Without attempting fully to discuss the matter it may be well to state two or three of the chief reasons.

Emancipation Proclamation not Applied to all Slave States.

(*a*) Mr. Lincoln's proclamation merely set free the slaves in those States that were waging war against the United States. There were also slaves in the loyal States of Delaware, Maryland, Kentucky and Missouri. Therefore slave property in those States could not be confiscated on the pretence that they were in rebellion against the United States Government. They had passed no ordinances of secession and were engaged in no rebellion. If the slaves in those States were to be set free, something more than a military proclamation of the President was necessary. But even of the eleven States that were making war upon the Federal Government, the whole State of Tennessee, many

parishes in Louisiana and several counties of Virginia were excepted from the Proclamation of Emancipation.

(*b*) Some lawyers of ability held that in the remaining States and parts of States the President's proclamation would operate to set free only those slaves residing upon territory which had come under control of the Union Armies. To settle this point, that is, to put the matter beyond all doubt, an amendment of the Constitution was deemed necessary.

Legal Difficulties.

(*c*) The Civil War was caused by an endeavor on one side to extend, and on the other to check the growth of slavery. By putting an end to this powerful institution there would be removed from the political life of the nation a source of grave danger. When this amendment had been ratified by three fourths of the States all slaves were emancipated, but for this loss to owners no compensation was made.

Mr. Lincoln never believed that Congress had a right to free a single slave in any State of the Union and he never claimed that as President he himself had any right to do so. It was in his capacity as Commander-in-Chief of the United States Army, and as a military measure deemed necessary for the preservation of the Union, that he issued his Emancipation Proclamation.

Emancipation, a Military Measure.

The Fourteenth Amendment was declared in force July 28, 1868. Up to that date the question of citizenship was somewhat perplexing. There was a State citizenship and a United States citizenship. By this amendment citizenship is nationalized. Clause 1 declares that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of

Citizenship Defined.

the State wherein they reside." From this provision it is clear that one may be born in the United States and yet not be a citizen thereof. That is, birth alone does not confer American citizenship. To be a citizen the person born in the United States must be subject to their jurisdiction. The child of a foreign ambassador, minister or consul, or of a foreigner who is merely sojourning or traveling in the United States, though born here is not an American citizen.

Before the adoption of this amendment some Southern States had passed laws discriminating against members of the negro race. Other commonwealths in that section were expected to follow their example. The justification for the passage of these laws, if any existed, must be sought in the political history of this country during the early years of Reconstruction.* To afford adequate protection to free persons of color the first clause of this amendment further provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Limitations on States.

Under the previous law the population for the purpose of apportioning Representatives in Congress among the various States was determined by adding to the entire white population three fifths of the negroes and any Indians who paid taxes. After the adoption of the Fourteenth Amendment all the negroes were counted. An important consequence of this change was to give the Southern States an

Three fifths Provision Changed.

* As commonly understood the era of Reconstruction extended from 1865 to 1877; there was, however, before 1865 an attempt at restoring the States to their normal relations to the Union.

increased representation in one House of Congress. Anticipating a Southern opposition to negro voting it was provided that the basis of representation in Congress should be reduced in the case of any State which denied to any of its male citizens that had attained their twenty-first year the right to vote "at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or members of the legislature thereof." If the disfranchised class amounted to one-half the number of citizens "being twenty-one years of age," the State would lose one-half its representation in Congress. If the disfranchised class was equal to one third of the male citizens that had attained their twenty-first year, the State would lose one third of its representation in Congress, and so on. By this provision, however, a State could without incurring this penalty disfranchise its male citizens "for participation in rebellion or other crime."

South Stronger in Congress.

How a State Can Lose Representation.

The third clause, which is self-explanatory, is as follows: "No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, removes such disability."

Southerners Disfranchised.

Except in the case of Jefferson Davis, President of the Confederate States, the disabilities incurred by those who supported the South were removed by Congress.

During the progress of the Civil War it became more and more difficult to recruit soldiers for the Union Army. The expedient of bounties was early resorted to in order to induce men to enlist. Moreover, those disabled in the service and in line of duty were by law entitled to pensions. These together with the cost of carrying on the war amounted to an enormous sum. By the Confederate States similar measures were adopted and at the close of the war their debt was also great. The fourth section of this amendment has reference to these facts. It reads as follows: "The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void."

Union Debt Not to be Questioned.

Southern Debt Cannot be Paid.

By the FIFTEENTH AMENDMENT, which was declared in force March 30, 1870, it is provided that the right of citizens of the United States to vote shall not be denied or abridged "by the United States, or by any State, on account of race, color, or previous condition of servitude."

When the Constitution was adopted, the Convention which framed it left the matter of voting entirely to the respective States. If there had been at that time any attempt on the part of the new instrument of government to regulate the suffrage, it is doubtful whether the Constitution would have been adopted. As it was, the opposition was dangerously strong. The suffrage was deemed important, and in bestowing it there was no thought of having it regulated by any authority outside the different commonwealths. In other words, the right to vote was regarded as one which each State could confer or withhold at pleasure.

Voting—a State Privilege.

The adoption of the Fifteenth Amendment was the first attempt to restrain the States in the matter of granting the franchise. After March 30, 1870, every commonwealth was free to refuse to its citizens the right to vote for lack of property, for lack of education, *etc.,* but they could not withhold the suffrage because of "race, colour, or previous condition of servitude." It is sometimes said that this Amendment gave the negro the right to vote. That is not strictly correct. It merely assured him that he would not be discriminated against because of his race or color. For some years after the Civil War, it is true, it so operated; but great numbers of colored men are now disfranchised because they lack educational, property and other qualifications. At present there seems to be a tendency to leave the question of voting where the framers of the Constitution left it, that is, with the respective. States.

Race or Color No Cause of Disfranchisement.

The Congress has power to enforce these amendments, the Thirteenth, Fourteenth and Fifteenth, by appropriate legislation. At the time of their adoption there was considerable opposition, and even now one sometimes hears of writers and speakers who advocate the repeal of parts of them. However, their provisions are a part of the law of

the land and are likely so to remain. By referring to the Constitution, Appendix B, the pupil will notice two new amendments, XVI and XVII, which have been recently adopted.

Almost at the outset it was stated that when a student has a firm grasp of the Constitution of the United States there is still before him a large and an important part of constitutional history. He has still to become acquainted with the history and the meaning of the constitutions of the States. These can be examined just as the Federal Constitution has been in the preceding chapters. The student will find it interesting and profitable to contrast part by part the constitution of his own State with that of the United States. In their large outlines the constitutions of the different States are very much alike. In matters of detail they vary greatly.

State Constitutions Very Important.

Not all Alike.

The following chapters will give a brief account of State government, beginning with the Township, the smallest administrative unit in the commonwealth. County government will then be discussed. Before considering the important subject of State government it may not be unnecessary to make a few observations upon the difference between the component parts of our Union and the political subdivisions of other countries.

In its origin the United States of America was composed of thirteen communities that had been settled by several different races at very different dates. These united in order to gain their independence.

CHAPTER XVII

STATE GOVERNMENT

THE preceding chapters have been devoted almost entirely to an examination of the Constitution of the United States. In other words, we have been considering the Federal Government, or, as it is more commonly called, the General Government. If nothing had been said on this subject, the term general government would suggest that there must also be, in our American system, a particular or local government. But this fact the student has not been left to infer. Almost at the beginning of these pages it was stated not only that each of the forty-eight commonwealths has a local or particular government but that these State governments are of the very highest importance, for they are closely concerned with the daily life of the American people.

Importance of State Governments.

The General Government of the United States represents the forty-eight commonwealths in their relations with foreign powers. It attends not only to our interests abroad but at home it regulates all those matters which could not with safety be left to the several States. The Federal Government, then, has for the field of its operations affairs both foreign and domestic, whereas the different States are concerned with only those that are domestic. This field, however, is very important and is of very great extent.

Duty of Federal Government.

If the subject of State government were as new to the student as the Government of the United States nearly always is, it would still require many pages to explain it. Fortunately this is not the case. Except

State Government Not New.

in the District of Columbia and in the Territories, boys and girls in America acquire unconsciously a knowledge of many useful facts pertaining to the government of the States, and this knowledge is not of less value because it is not learned from books.

We are now prepared to begin our examination of the constitutions and the governments of the various States. As to the first, it may be observed that in their large outlines all the State constitutions resemble the Constitution of the United States. Each provides for a frame of government, a schedule and a bill of rights, or something equivalent thereto. In every case this frame of government consists of: (*a*) an executive department whose head is a governor; (*b*) a lawmaking body of two branches, known either as a legislature or a general assembly; (*c*) a judicial system composed of inferior, superior and supreme courts. For the schedule there is a provision in every constitution. If there is not prefixed to each State constitution a bill of rights, there is such a bill following the constitution. In a few cases, it is true, constitutions have been neither preceded nor followed by bills of rights. In these exceptional cases the provisions collectively known as bills of rights will be found scattered throughout the constitution. In other words, these safeguards of individual liberty are not assembled in one place, but are in solution in the instruments.

Resemblance of State Constitutions.

All have Substance of Bill of Rights.

In the particulars mentioned, the State constitutions are alike, and, as just observed, they resemble the Constitution of the United States. As our examination proceeds we find that in their details the forty-eight State constitutions are unlike one another and that in many respects they differ from the Constitution of the

United States. What has been said of differences in the fundamental law of the various States is likewise true of their governments. No two are precisely alike. The members of a human family may, and very often do, bear a strong resemblance one to another, yet we have no difficulty in distinguishing them. Our constitutions, State and Federal, belong historically to the same family. In conducting our inquiry, then, it is necessary to select some well known type of government.

Divisions of The County.

For greater convenience of administration every State is divided into "Counties" and in many commonwealths these are subdivided into "Townships." Within the townships there are still smaller areas, as, for example, road districts and school districts. The latter being the smallest unit of local government, we may begin with a brief account of it.

Different Kinds of Townships.

It has just been observed that in most parts of the United States the counties of each commonwealth are divided into townships. In the new States, each township is six miles square, or contains an area of thirty-six square miles. In the old States, however, there is no such regularity in the size of townships. In fact it is difficult to find two townships of equal extent. Some are smaller, some are much larger than the uniform townships of the West. A single township may contain twenty, forty, sixty or more school districts.

The School District.

In many States the school district has authority to raise money by taxation, for the purpose of building and equipping, enlarging or repairing school houses. A public meeting of the voters is empowered to raise money for the maintenance of schools and to elect a board of trustees or school-directors. By these officials teachers are appointed and their salaries determined. One member of the board is appointed clerk.

His duty is to take annually in his own district a census of the children of school age; to act as secretary and keep minutes or records of the proceedings of the board and to advertise the time and place of holding school meetings. In New England this district school organization is more complex and more important; besides the school-directors there are clerks, treasurers and moderators. Participation by the voters in these school-meetings gives them confidence and skill in the management of local affairs.

Benefits of Attendance at School Meetings.

It has been stated above that American children acquire almost unconsciously a knowledge of many important facts about government. In the District of Columbia, for instance, they soon learn something of the powers and duties of the President of the United States and the functions of Congress. In the States, on the other hand, they become at a very early age familiar with some of the parts of a very different sort of government. On their way to and from a country school they travel over a road that has been made by some agency to them unknown. Perhaps in a vague sort of way they think that it has always existed and has always been trodden by human feet. Those who keep these highways in repair, it is true, may be known to some or to all of these children, but they could not all tell who employs the workmen to maintain the roads or to repair the bridges. Their school-house, too, may have been built by unseen hands, but the youngest children are aware that carpenters, bricklayers, masons and painters keep it in repair or, perhaps, enlarge it. To know what authority employs and pays the

Political Knowledge of Washington Children.

Of Children in the States.

builders of highways and school-houses requires greater maturity of years than is ordinarily possessed by little children. This knowledge, too, comes by and by. There has, perhaps, been a change of teachers, a circumstance by no means uncommon in rural districts. Another teacher has, in some way, been appointed, and the school is conducted much as before.

Overseer of the Poor. It is also known to many of these children that there are in their community some families that are very poor, and that these indigent families are assisted by a citizen who is known as an overseer of the poor. They are likewise aware

Poundkeeper. that there is another official who drives off stray animals and keeps them in pound until the owner calls for them and by the payment of a fine obtains their release. Children soon learn that there is

Constable. an official known as a constable, and that he is possessed of considerable authority. They know the "squire," or justice of the peace, who issues the warrants served by the constable, gives to

The "Squire." people in necessitous circumstances orders upon the overseer of the poor or presides at the trial of some inferior case. This suggests the kind of political knowledge possessed by country children. So far, then, as they are concerned not much need be said about Township government. The majority of school children in the United States, however, do not live in rural districts but in towns and cities. They are familiar with another set of officials and with a different system of government. As they know little of rural life, it is necessary on their account to say a few words more about the township.

The origin and development of the Township, belonging as it does to political history, cannot be discussed here. It is sufficient

to say that it grew up in England long after the Angles, Saxons and Jutes invaded that country about the middle of the fifth century of the Christian era. By Englishmen the idea of the township and the government appropriate to it was brought to America when they settled New England. It is in that section of the United States that it has been carried to the highest degree of perfection. In those parts of the West that were settled principally by people from New England the township and its peculiar form of government has reappeared.

THE TOWN MEETING

In a New England township the system of government is very simple and very democratic. The government is composed of all the male citizens twenty-one years of age and upwards, but as it would not be convenient for all of them directly to participate in government, they delegate political power to certain officers whom they elect in town-meeting. This event, the holding of a "town-meeting," occurs once every year, in February, March or April. For the protection of their own interests as well as those of the community all qualified voters are expected, and in early days were required to attend. Any one is privileged to take part in the discussion of the business before the town-meeting.

The Town Meeting.

At these meetings, usually held in the town-house, where there is one, measures relating to town affairs are discussed, and after debate adopted or rejected. In these assemblies town officers are chosen and taxes voted for the expenses of the town. The principal officials are:

Business of Town Meeting.

THE SELECTMEN, varying in number, according to the size of the town, from three to nine. They call town-meetings, impanel jurors, grant licenses, and lay out highways. They look after the health of the community, by taking measures

to prevent the spread of contagious diseases, by giving directions respecting sewerage, etc. If anything goes wrong, they listen to and consider complaints. In lawsuits they represent the town, and in the interval between town-meetings they practically govern it.

THE TOWN CLERK is a very important officer. His duties correspond in some respects to those of the Health Officer in a city; that is, he keeps a record of births, deaths and marriages. He also keeps a record of the elections held in the town. This, of course, includes the names of candidates with the number of votes cast for each. As the title of this official suggests, he keeps the records of the town. There may also be one or more ASSESSORS OF TAXES. These prepare the tax-list for the town. This office suggests that of the COLLECTOR, who has the authority to seize the property of persons refusing to pay their taxes, sell it at auction, deduct the amount of the assessment and turn over the proceeds to the owner. Under certain circumstances the delinquent may be arrested and even imprisoned. In some communities the office of tax-collector is performed by the constable, who, besides serving writs, summons jurors and takes criminals to jail. The taxes gathered either by the collector or the constable are turned over to the town treasurer.

TOWN TREASURER. This officer receives and keeps the income of the town, whether it is money derived from taxes or from other sources. He is required to keep a careful record of all receipts and disbursements. When he expends any of the money belonging to the town, he keeps the order or warrant upon which he made the payment. If, for example, he is directed by the overseer of the poor to pay a small sum to aid a poor family in the community, he keeps the order of the overseer as a justification for paying out public money. On his own responsibility he never pays the

bills of the town. He always acts upon instruction from the proper officers.

THE SCHOOL COMMITTEE, it is scarcely necessary to say, is a very important body in the life of any progressive community. Its members are chosen for a term of three years, and one third of their number is elected annually. This Committee is required to visit all the public schools in the community at least once each month and to make a yearly report to the town. In some communities they examine applicants for teachers' certificates and license those who fulfill the requirements. They also determine what text-books are to be used.

Besides the officers whose duties have been described there are many others. There are surveyors of lumber, sealers of weights and measures, fence-viewers, pound-keepers and surveyors of highways. The Surveyors of Lumber measure and mark any lumber that is offered for sale. The Sealers of Weights and Measures test the measures and weights that are used in trade. Only those can be used whose correctness has been verified by these officials. The Fence-Viewers hear and decide disputes about partition fences or about walls between adjacent fields or gardens. The duties of the Pound-keeper have already been stated, and the duties of the Surveyor of Highways are indicated by the name of his office. It is his business to see that roads and bridges are kept in repair.

Local Government Differs.

In making our inquiry into the stock of political information possessed by boys and girls in rural districts some officers were mentioned and duties ascribed to them which under New England township government they do not, perhaps, perform. These are not contradictions. They are both true, but not for the same place. In the South the

New England town-meeting is unknown, and the Middle States have local government that differs from both. It should be remembered, too, that State legislatures have power to change local systems of government and that what was once a correct description may no longer be true. One finds local governmenment, then, changing with almost every geographical section of the country and if not with every passing year, certainly somewhat with every generation.

Village and Borough.

There are some administrative units, such as the village and the borough, which are withdrawn from the general government of the township in which they happen to be located. They are directly responsible to the county, or the State. When their population becomes sufficiently large these boroughs may be authorized to form a city government. This will be discussed in a later chapter.

The Village in New York.

In the State of New York, the village government consists of a body of trustees, which has a president. There is also a village treasurer, a collector, a clerk and a road commissioner. The borough, generally a community of two or three thousand people, is a familiar unit of local government in Pennsylvania. There are boroughs, however, of fewer than 100 inhabitants, but whether small or large the borough always has its formidable complement of officers. There are several boards, as for example, a school board, a poor board and a board of health. There is a burgess or mayor, tax-collector, treasurer, secretary, chief of police, and a road commissioner.

The Borough.

In New Jersey, rural government is generally township government, resembling very closely the New England system. There are road districts, school districts and town-

ships; there government is simple in organization and generally efficient. In parts of the State the town-meeting flourishes as it did in early times. Where great industries have been established there is town or city government, and, in consequence, the town-meeting has ceased to be as important an institution as it formerly was.

Town Meeting in New Jersey.

As employed in the preceding pages the word town or township has been used to indicate a certain geographical area which may be shown on a map. It is well to remember also that the term means the whole body of people living on that defined area and associated for the purposes of government. By a town or township, then, is meant not only a certain number of square miles within a particular county but also the organized people who dwell upon that area. In other words, a town consists of the people of the town associated in a body politic, or municipal corporation. This is the most important meaning of the word. In precise language, then, the town is not territory but people.

"Town" Has Various Meanings.

Town Means People.

After all that has been said in the preceding chapters, the student may still believe that the government is a thing distant and mysterious. From our present investigation of the nature of rural government it should be clear that at least in the town-meeting "the government" is not remote from the people, but that it consists of the plain people themselves discussing and directing the affairs of their own community. This system of government is an example of a pure democracy. It is admirably adapted to the management of town affairs.

Town Governments Democratic.

Representative Democracy

When there is an attempt to regulate the affairs of a county or State, power must be delegated to a set of officials. This is representative democracy, and while it is not free from objections, it is the best system that has yet been devised. By the term republic we mean a representative democracy. Our township government, then, is an illustration of pure democracy, while the government of the larger units, as the county, the State, the United States, is each an example of representative democracy. The most evident observation to be made concerning representative democracy is that the political power delegated to any man or any set of men is liable to be abused. This defect is inseparable from the system, but danger from this source may be considerably reduced by frequent elections, that is, by giving to the representative only a brief term of office. The reward for duty well performed is a re-election to the same office, or an election to a higher one. Constant change or even very frequent change of officers, however, is not without some disadvantages.

A Republic.

Delegated Power May be Abused.

From what has been said of township government it is clear that the town-meeting is a legislative body: that the constable is an executive officer and that the justice of the peace performs some judicial functions. In other words, its organization corresponds roughly to that of the State or the United States Government. But there is a marked distinction. The separation of functions is not carried so far in township government. The Town-Meeting, for example, not only enacts town laws, or by-laws, but it actually performs many executive functions such as the appointment of minor offi-

Local Resembles Federal Government.

cials and the opening of highways. In the next chapter will be discussed the relation of town government to that of the county, the nature of county government and of some administrative units not so well known.

CHAPTER XVIII

LOCAL GOVERNMENT

In chapter XVII it was stated that though the township is the principal unit of local government in New England, that is not the only section of the United States in which government by town meeting is established. New York has an efficient system of township government, and so has the neighboring State of New Jersey. In both commonwealths, it is true, there is a division of functions between the township and the county. It is in New England that government by town meeting has been developed to the highest point of perfection, and though it has been established there from very early times, it never extended to the South. In that important part of the Union the *county* is the unit of local government. In Louisiana, which was first settled by French Catholics, the division of the State corresponding to the County is called a parish.

Town Meeting Not Confined to New England.

County Chief Unit in South.

The Parish.

It would not be unprofitable to inquire concerning the origin of the town-meeting, but at this time space will not permit anything more than a few general observations on this interesting subject. Without attempting to trace the town-meeting back to the *ecclesia* of the Greeks, or the *comitia* of the Romans, it will be sufficient to state that when the Angles, Saxons, and Jutes conquered Britain they brought with them those political institutions with which they were most familiar in their old

Town Meeting Grew Up in England.

homes in Germany. In England they developed the township, so called from the "tun," or rough fence and trench which enclosed it. So far as our present lights lead us it seems that representative government was taught to the Anglo-Saxons by the Roman missionaries. The influence of Christianity tended to instruct and to unite the warring invaders of Britain. Each township or village was separated from its fellow-township by a belt of forest-land or waste. The business of the clansmen dwelling within this enclosure was managed by a *tun-gemote* or town-meeting. In the course of time many changes came over this institution, and after the Norman conquest its importance must have been considerably reduced. There-

The Manor.

after the township was known as the manor, and its officers became more directly responsible to the lord than to the people. Self-government, however, was not entirely abolished, for the essential features of the town-meeting were preserved in the *court leet,* the *court baron* and other tribunals. In the obscure history of that time one thing is clear: in its origin as later in its highest development town-government was thoroughly democratic. In the *tun-gemote* every warrior had a voice, just as in a New England town-meeting every male citizen who has attained to his twenty-first year can speak or vote upon questions concerning his community.

Town Government Democratic.

As the clans settled into townships, so the tribes, which included a number of clans, generally occupied "shires" or shares of the kingdom. After the Norman conquest some of these divisions became known as counties. In England and Scotland they are more commonly called shires, while in Ireland, which was never conquered by the Anglo-Saxons but received its political organization from the Anglo-Normans, such divisions of the kingdom are invariably called counties.

Shires. Counties.

In America, counties grew up naturally among the English settlers. Nothwithstanding their common model, however, in the course of time the counties developed into distinct types. We shall first describe briefly the county as it exists in Massachusetts. As the township fulfills in that Commonwealth so important a place in regulating local affairs, there should be correspondingly less administrative work for the county, and this is the fact.

The Massachusetts County.

The organization of county government in Massachusetts is rather simple. In its origin it was merely a judicial and military subdivision of the State. Indeed, it was with reference to the courts and to the militia that the towns of colonial Massachusetts were first grouped into counties.

Military Origin.

In the preceding chapter a town was defined as consisting not so much of territory as people; but it is as people banded together for the purpose of managing their affairs. To conduct their business they can acquire and hold property, sue and be sued in the courts. In other words, we were told that the town is a corporation. The *county* also is a corporation. It can erect and repair the county buildings, such as the jail, the court house, and, sometimes, the almshouse. It can sue and be sued like a natural person.

Town a Corporation.

County a Corporation.

The officers of a Massachusetts county are: The County Commissioners, a County Treasurer, a Sheriff and Justices of the Peace. There are also officers of the courts. These will presently be mentioned.

County Commissioners. The County Commissioners, of which there are three, are elected for a period of three years. It is so arranged that one commissioner goes out of office each year. These officials represent the county in all suits

to which it is a party; they open and discontinue highways within the county, and apportion the taxes among the towns. They also erect and keep in repair the county buildings and have charge of the houses of correction.

COUNTY TREASURER. Like the commissioners, the Treasurer is chosen by popular vote for a term of three years. His duty is to receive and disburse the revenue of the county. This is derived in part from taxation and partly from fines and costs imposed by the courts.

JUSTICES OF THE PEACE are appointed by the governor for a period of seven years. They are authorized to administer oaths for general purposes, to issue warrants, unite persons in marriage, and in petty cases to exercise criminal jurisdiction. They may be reappointed. In some States the duties of the justices of the peace cover a somewhat wider field.

THE SHERIFF is elected for a term of three years. His duty is to attend the county courts and to execute in every case the sentence of the court, whether it be fine, imprisonment or death. Whenever he is required, he must be present at the meetings of the county commissioners. He is responsible for the preservation of peace within the county; his duty is to pursue criminals and to arrest disorderly persons. In his efforts to preserve peace, if he should meet with serious resistance, he is empowered to call out the *posse comitatus* (the power of the county); if the disturbance is too formidable for the able-bodied men of the county, the sheriff may call upon the governor for the use of the State militia. In case the public safety appears to require it, the governor, in turn, may call upon the President of the United States. It is scarcely necessary to add that the entire army of the United States, and, if it could be of service, the navy also, the militia of the State and all the able-bodied men in the

county can be brought to bear upon an insurrectionary or seditious element in any locality.

THE COURTS. The superior court holds at least two sessions annually in each county and tries civil as well as criminal causes. In each county there is also a probate court. This tribunal has jurisdiction over all matters relating to wills, to the administration of estates and the appointment of guardians.

THE REGISTER OF PROBATE, an officer elected by the people for a term of five years, is the custodian of the wills and documents relating to the business of the court.

THE REGISTER OF DEEDS is elected by the people for a period of three years. His office preserves the records of all land-titles and the transfers of land within the county. Unless mortgages and deeds are recorded in this office their value is impaired.*

It has just been observed that though they had a common model, the English shire, American counties developed into different types. In New England the township is much more important than the county. In other parts of the United States this is not the case. When one leaves Massachusetts and begins to travel westward, he will find across the boundary line, in New York, a system of local government not less efficient, perhaps, but quite different, and in no part of the system of the Empire State is the difference greater than in the matter of county government. In New York there is a

COUNTY BOARD OF SUPERVISORS. This is the law-making body of the county and is composed of one member from each town and, where the county contains a city, one from each ward. Each supervisor is elected by the voters for a term of two years, and is not only a county officer but also

* An interesting and sufficiently complete description of the New England county will be found in John Fiske, *Civil Government in the United States*, pp. 48-57.

an officer of his own town or city. The duties of the Supervisors are numerous and important. They are the custodians of the corporate property of the county; they audit the accounts and charges against it and direct the raising by taxation of the sums necessary to pay them. They are also empowered to direct the raising in each town of the money necessary to meet its expenses. The taxes due from the town to the State are assessed and collected by them. They can borrow money for the use of the county and can authorize a town to borrow money for its expenses; they fix the salaries of the county treasurer, district attorney and county superintendent of the poor. They can divide or unite towns and change their boundaries. Outside of cities and incorporated villages they can establish fire districts. They are also empowered to erect school commissioner districts and to make laws respecting game and fish within the county. They have in addition many other duties to perform.

The point to be noticed here is that the county has a supervision of the town. We have seen that each town and each city ward is represented in the Board of Supervisors, and by their control of the revenue of the various towns the county exercises considerable authority over their affairs. Besides this local legislature there are in every county very important executive officers. Chief among these are: the Sheriff, District Atorney, County Clerk, County Treasurer and Superintendent of the Poor. Each is elected for a term of three years, and most of them are agents of the State for the enforcement of its laws within their county.

The District Attorney is the legal adviser of the grand jury and of the executive officers of the county; he is also within that district the public prosecutor of criminals.

The County Clerk. As his title implies, this official keeps the public records of his county; that is, such as records of deeds, mortgages and judgments. He keeps a

record of the proceedings of the county court and acts as clerk of the State Supreme Court when sitting within his county.

THE COUNTY TREASURER receives the money collected by the town collectors for county and State taxes and pays the latter to the State Comptroller. From this officer he in turn receives money raised by the State for the public schools of his county, and pays it over to the supervisors of the several towns.

THE SUPERINTENDENTS OF THE POOR, of which there are generally from one to three, have charge of the county almshouse and report annually to the State Board of Charities.

COUNTY JUDICIARY. Except New York County, every county in the State has a court for the trial of civil and criminal cases. Unlike the judges of the United States courts, who are appointed during good behavior, the county judges in New York are elected for the term of six years. Except murder, all ordinary crimes may be tried in the county court, and generally any civil suit at law when the sum sued for does not exceed $2,000. The county court also considers appeals from decisions returned by Justices of the Peace.

CORONERS. Four coroners, usually, though not always physicians, are elected by the voters of each county. The duty of the coroner is to investigate the causes of sudden or suspicious deaths; on request, they may also inquire into the cause of any suspicious fire. To aid him in any such inquiry he is empowered to summon and examine on oath any person whom he has reason to believe has a knowledge of the matter under investigation.*

THE SURROGATE'S COURT. Each county has a surrogate's court. Its business is to distribute the estates of decedents

* Except in counties which are wholly or partly in a city of the first class, the old institution of the coroner's jury was abolished by a State law in 1899.

among those who are legally entitled to receive a share of the property and to exercise a general oversight of the property of minors. The surrogate is chosen by the people for a term of six years. The county judge acts as surrogate where the population is less than 40,000.*

It has been seen that the New England town-meeting is an example of a pure democracy, and that the government of a New York county is an illustration of a representative democracy. The New England town-meeting performs legislative, executive and even a few judicial functions. In a county of New York State, these functions are separate and distinct. We have seen that county government in Massachusetts is very different from county government in New York. The Virginia system, which we are now about to examine, is unlike both.

Early New England had long and severe winters, a soil generally poor and few navigable rivers extending into the heart of the country. The climate of the lower Chesapeake was more genial, the soil more fertile and the interior of the country more easily reached through its navigable rivers. The people who settled New England belonged in general to the same class of society in England as did those who first settled in Virginia. In social conditions, however, some differences are to be noticed. New England contained few slaves, whereas they formed an important element of Virginia's population. The "redemptioners" who were taken to New England appear to have found it easier to gain admission to society than did the "indentured white servants" and the occasional criminals who were brought to Virginia. It was long before the "white trash" melted into the class that owned plantations. These and other influences tended to build up in Virginia an aristocracy. In New England there was no class so entirely distinct from the average members of the community.

* A very clear account of the New York county will be found in *Civics For New York*, pp. 70-83, by Charles De Forest Hoxie.

As compared with Virginia, Massachusetts was a small colony, but was much more thickly settled. In the Old Dominion, towns were few, and even to-day large towns are not numerous in that Commonwealth. The plantations were commonly large, some of them including 25,000, or even 40,000 acres. In these circumstances there was generally a considerable distance between the homes of planters. In a word, Virginia was sparsely settled and was not so well adapted to town-government as was New England, a region of small farms.

Virginia Thinly Settled.

So intersected by large rivers is the tide-water portion of Virginia that the planter could take his tobacco or other crop to his own landing; place his order with the captain of a vessel and wait until its return for his supply of cloth, furniture, tools or farming implements. This direct trade with England prevented the growth of small towns in Virginia. Bearing in mind, then, the distance between plantations and the separation of classes just referred to, there was no town life in the Old Dominion, and this being the case there was no town-meeting.

No Town Meeting in Virginia.

Though there was no town-meeting in Virginia, the Parish, modeled upon the English institution of that name, was an interesting unit of local government.* The authority of the Parish was exercised by the vestry. This was a body of twelve chosen or picked men. At first they were elected by the people, but later they were accustomed to fill vacancies in their own number. Though it began as democratic government, it soon ceased to be such. The vestry apportioned the parish taxes, presented ministers for induction into office, named the

The Vestry.

* It is now generally agreed that the English parish was also the origin of the New England town.

church wardens and provided for the poor. With such a government the majority of the people had little to do. "The vestrymen," says Jefferson, "are usually the most discreet farmers, so distributed through the parish that every part of it may be under the eye of some one of them."

THE COURT HOUSE. In the Virginia House of Burgesses the representatives sat not for parishes but for counties. There were from one to three or even more parishes in each county. The county court, which met as often as once a month, usually assembled at some central or convenient place. Frequently there was at this "shire-town," as it would have been called in England, little besides the court house, which was often named from the county, as Hanover Court House, Appomattox Court House, etc. Except in the South, one does not often meet towns so named. New Jersey, indeed, has two such places, *viz.*, Cape May Court House and Monmouth Court House.* In Virginia and elsewhere the tendency is to drop the term "Court House" as part of the name.

POWERS OF THE COURT. In old Virginia the county court had jurisdiction in criminal cases not involving peril of life or limb, and in civil suits in which the amount at issue exceeded twenty-five shillings. Causes of less importance could be determined by a single Justice. The court also exercised some executive functions. It appointed its own clerk, whose duties corresponded to those of similar officials in other colonies, surveyors of highways and constables; it also presented to the governor the names of three of its members, of whom one was to be appointed sheriff for the ensuing year. It likewise attended to the administration of wills; superintended the construction and repair of bridges and highways, and computed and assessed the county taxes; these included charges for building, when necessary, and re-

* In Revolutionary times there was also Sussex Court House, now Newton.

pairing the court house and the jail, for repairing roads and bridges as well as the compensation of representatives sent to the colonial legislature. It was this body and not the county court that determined the proportion of colony tax that was to be paid by each county. Among other duties, the sheriff collected both the parish and county tax. This was usually in tobacco, and for its proper care and disposal he was responsible. In other words, he acted as county treasurer. He also supervised elections for representatives to the legislature. It was mentioned above that the county court presented to the governor the names of three of their members from which list he was to appoint a sheriff. The person chosen for the ensuing year was usually the senior justice. It thus appears that persons outside the county court had no prospect of holding the office of sheriff. Indeed, government in the parish, the county and the colony was in the hands of a few families.

THE COUNTY LIEUTENANT. Each county in the province was accustomed to raise a certain number of troops, and as a central place for instruction and drill would be inconvenient, the county was divided into a number of military districts each with its own company. The command of all the districts was vested in the county lieutenant. He bore the title of "Colonel" and was generally regarded as a sort of deputy-governor.

Result of the Two Systems.

It has been said that the town-meeting system of New England produced a multitude of keen and able debaters skilled in parliamentary law, and the statement is undoubtedly true. The Virginia system, on the other hand, by keeping the administration of affairs in the hands of a few families, developed a number of very great leaders. It would seem that the former was best adapted to the preservation of civil liberty while the latter favored the development of the genius for command.

CHAPTER XIX

STATE GOVERNMENT

THE preceding chapter described briefly the county of colonial Virginia. Under the constitution of 1902 its organization is somewhat different. It is provided that there shall be elected by the qualified voters of each county a county treasurer, a sheriff, a commonwealth's attorney and a county clerk. There are also commissioners of revenue for each county; these may be appointed or elected, as the General Assembly may provide. In a manner prescribed by law there are appointed a superintendent of the poor, and a county surveyor. There is also one supervisor for each magisterial district. These officials, who are elected by the qualified voters, constitute the county board of supervisors. Both county and district officers are chosen for a term of four years, except that there is a county clerk who holds office for eight years. In Virginia the General Assembly, or legislature, is required to provide for an examination of the books, accounts and settlements of county and city officers charged with the collection and disbursements of public funds.

A Contemporary Virginia County.

It has been said that there are parishes in Louisiana and that the parish was a unit of local government in Virginia. In South Carolina also there were parishes, though they were much more democratic than those of the Old Dominion. Both Maryland and Delaware had districts known as hundreds, but we are not now concerned with those interesting memorials of the past. Local government in the northwest, as for example in the progressive commonwealths of Wisconsin and Minnesota, bears so close

The Parish and the Hundred.

a resemblance to the systems described that it is not thought necessary to treat them separately.

The English-speaking people have long been attached to a legislature of two branches, as we see it in the British Parliament, in our own Congress and in the General Assemblies of all our commonwealths. Hitherto this has been deemed adequate for the popular welfare. In recent times, however, there has grown up a tendency to diminish somewhat the power of the legislature, and to give to the voters themselves a direct participation in the suggestion and approval of laws. This is provided for by the Initiative and the Referendum. Article V of the constitution adopted by Oklahoma in 1907 provides that "the legislative authority of the State shall be vested in a legislature, consisting of a senate and a house of representatives; but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act of the legislature."

The Initiative and the Referendum.

By the Initiative 8 *per centum* of the legal voters are empowered to propose any legislative measure, and 15 per cent. have the right to propose amendments to the constitution by petition; every such petition must include the full text of the proposed measure. The *Referendum* may be ordered, with certain exceptions, either by petition signed by 5 per cent. of the legal voters or by the legislature. Referendum petition must be filed with the secretary of state of the Commonwealth within ninety days after the adjourn

ment of the session of the legislature that passed the bill on which the referendum is demanded. If the measure is approved by a majority of the qualified electors, it cannot afterwards be vetoed by the governor. From this provision it is clear that in the State of Oklahoma, where the people can both suggest and approve laws, the legislature is not so important a body as it is elsewhere. The veto power of the governor, too, is not so formidable.

Diminished Importance of Legislature.

For the concluding chapters of this study there have been reserved two of the most important topics that can be discussed in an essay on civil government, *viz.*, muncipal government and the duties of citizenship. When we reflect that more than one third of the people of the United States dwell in cities, the importance of the former becomes apparent. As law-abiding and intelligent people in a community are necessary to its healthy existence it would seem that not much need be said concerning the obligations of citizenship. A brief treatment of these topics will conclude this study on Civil Government in the United States.

Foreigners visiting the United States and making a study of their political institutions bestow much praise upon American governmental systems, local and general. From this commendation, however, municipal government is excepted. In the management of rural affairs the American people have been remarkably successful. Town and county government are everywhere fairly efficient and deserve the praise they have received. The administration of State and Federal Government is almost equally satisfactory. How, then, does it happen that in the government of their cities the people of the United States have so often failed? To this inquiry it is difficult to give

City Government Alone Inefficient.

a correct and complete answer. At least a partial explanation must be attempted.

Municipal Government Is New.

The problem of city government is really a new one for the American people, and when they have had sufficient time for its consideration it will no doubt receive a solution as satisfactory as have other grave questions. The town-meeting, for example, grew up and was perfected in early American experience. From the Colony it was an easy transition to the State. These parts of the system, then, have long been established and have been slowly improving. The Federal system, it need scarcely be repeated, was suggested by the organization that existed in most of the States at the time the Constitution was adopted. But in the year 1787 there were in the United States almost no cities. Philadelphia had at the time of Washington's inauguration a population of 42,000; New York came next with 33,000 people, and Boston was not yet a city. After the year 1840 the urban population grew rapidly and cities sprang into existence as if by magic. The novelty of this problem of municipal or city government, then, may be offered as one explanation of our failure in a single field. There is another reason for the slender success of the American people in the government of their cities, and that is its great complexity. In a certain sense it is more difficult to secure good city government than it is to establish national, state, or town government. Municipal government, it is generally admitted, is in some aspects more complex. Of course the administration of the National Government is no easy matter and it is a familiar fact that at the outset it it was far less efficient than is municipal government at the present time. In more than one hundred and thirty years the administration of the Federal Government has been

Municipal Government Is Complex.

greatly improved. Are we to expect equal progress in the management of American cities? It may be confidently asserted that municipal government will exhibit at least equal improvement. Indeed, it is easy to point to unmistakable signs of progress in very recent years.

Municipal Government Improving.

After the achievement of American independence, in fact even before that event, people generally perceived the advantages of a distribution of political power. In all the States there were established legislative, executive and judicial departments. This separation of powers was considered one of the chief merits of the British constitution and it was natural to imitate it. We have seen that this complete separation does not take place in government by town-meeting and it was a mistake to have introduced the principle into city government.

Separation of Powers a Defect.

It is scarcely necessary to add that in the details of their government American cities show great differences. There is, however, a general resemblance. There is, for instance, a legislative branch called the city council, which is often divided into common council and select council. In other words, the municipal legislature, by whatever name it is called, is, like the Congress and the State legislatures, a lawmaking body of two chambers. In recent years there has been a tendency to constitute the city council of one house. There is also an executive known as a mayor, and there is everywhere a Judiciary. This, of course, is a part of the State system. In colonial times there had been many and bitter controversies with royal governors, and the American people seem from that experience to have acquired a fear of

Cities Alike and Unlike.

one-man power. It was not unnatural, then, to limit the authority of executives, whether Federal, State or municipal. When in the course of time the mayor was stripped of his power, the boards of aldermen or the members of council found it easy to inaugurate and execute schemes very injurious to the public. This system attracted general attention when there was a marked increase in the rate of taxation. Further examination showed that the work done for the public was often marked by gross carelessness.

Mayor Stripped of His Powers.

There have been many attempts to check the recklessness of city officials by a system of State supervision, but the lawmakers of a State are often not qualified to deal with problems in a distant city which, perhaps, they have never visited. They can neither know the needs of such a community nor the abuses which may exist in its government. A knowledge of local conditions is indispensable to any enlightened remedial action. "A man fresh from his farm on the edge of the Adirondacks," says John Fiske, "knows nothing about the problems pertaining to electric wires in Broadway, or to rapid transit between Harlem and the Battery." His consent to legislation on such subjects is likely to be obtained by the passage of some measure in which he has a nearer interest. State intervention or State supervision has often failed to improve municipal government. It did not, for instance, prevent Tweed and his political friends from securing the important offices of New York city and stealing millions of dollars from the people. The

State Supervision Not a Cure.

Philadelphia Gas Ring conducted its operations on a scale much more modest. Depredations of this sort led to a change in public sentiment as to one-man power. Experience had taught the American people that one man was not so dangerous to the public welfare as a gang of corrupt politicians, and there soon appeared a disposition to reserve a measure of power to the mayor and to fix upon him the responsibility for an efficient administration of city government. We have seen that when the framers of the Constitution were in doubt as to whether they would invest the executive authority in a board or in one person, they decided, because of this very consideration of responsibility, to vest the supreme executive power of the United States in a President. By offering to the people the choice of only a few officers the city of Brooklyn, before it became a part of Greater New York, had an excellent system of municipal government. The multitude of officers elected in Philadelphia, Boston and New York is rather a disadvantage, and it is only a mayor of good intelligence and good integrity who can keep this army of subordinates in order.

One-Man Power—Not So Dangerous.

These considerations have led some political thinkers to recommend for cities generally government by commissions. The system has not been given a sufficient trial, though where it has been adopted it has been fairly successful. This again raises a question similar to that of the one-man power. Shall we, it is asked by some New Yorkers, place at the disposal of a few men the vast interests of our great city? The advocates of city government by commission contend that where the system has been tried it has been found more efficient as well as more economical. They

Government by a Commission.

further claim that in the make-up of commissions the people will get the benefits of expert service. This innovation in municipal government is as yet too new either to be condemned outright or to be adopted without further trial. Many able men familiar with municipal affairs do not hesitate to reject the idea. The present generation has given much thought to the question of city government, and there is no doubt that there has been marked improvement in municipal administration. As has been stated, the subject is exceedingly complex and a perfect system can not seriously be expected except as the product of time. We may be certain, however, that the abuses of the past are not so likely to reappear.

On Trial.

The ignorant foreign vote in large cities is for some people a satisfactory explanation of the failure hitherto to have devised a better system of government for American cities. Those who have investigated this subject, however, and who are competent to speak with authority are much more inclined to place the responsibility upon native real estate speculators. It has been shown, too, that some of the most corrupt communities have had the smallest proportion of foreign-born citizens. From whatever element it comes, the ignorant vote can scarcely ever fail to do harm. It has been proposed to return to a restricted suffrage, though it is not probable that such a step will be taken, for political scientists well know that there is not a little danger in a restricted suffrage. It is not wise to introduce into the State a discontented element. The disfranchised would soon connect their poverty or their lack of social position with the absence of the right to vote, and in the hands of demagogues they would become, whether they were of native or of foreign

The Foreign Vote.

Speculators.

A Restricted Suffrage.

birth, a dangerous element. Thomas Jefferson, our greatest political thinker, did not favor a restricted suffrage.

Blind Allegiance to a Party.

It is certain that far more harm is done by blind allegiance to a political party than by the votes of ignorant citizens. Upon the foreign policy of the United States men may well differ in opinion. As to its domestic policies complete agreement is hardly possible. Men equally intelligent may hold different views concerning a protective tariff. The wisdom or the desirability of making internal improvements at National expense once divided and still divides the American people. The idea of Federal grants to steamship companies has its advocates and its adversaries. In our experience there have often been discrepant opinions concerning monetary legislation. On questions of this character differences of opinion are to be expected. These, however, are not the questions that arise in the government of a city. Though men are accustomed in city elections to act with this or with that political organization, they have identical opinions as to the benefits of well-paved and clean streets, an efficient system of education, an abundant supply of good water, *etc.* Why, it may be asked, do they in municipal elections support one party rather than another? The answer is evident. In order to retain control of the National or the State government it is believed that there must exist in city, town and county an efficient organization. When a political party gains control of all the offices in a city it is able thereby to persuade its supporters to vote the State and the National ticket of the

Municipal Questions Not Party Questions.

party. From the point of view of the party machine, then, party lines should be pressed in municipal as well as in State and National elections. In the opinion of intelligent voters unconnected with the machine no such loyalty to party is deemed necessary, and in city elections there should be complete independence in voting.

Independent Voting in City Elections.

CHAPTER XX

RIGHTS AND DUTIES OF AMERICAN CITIZENS

Knowledge of Rights and Duties Important.

To know the history of our Federal Constitution and the meaning of its provisions is a splendid accomplishment, but it is not of greater value than a knowledge of the rights and duties of American citizenship. Because of its importance this subject has been reserved for the final chapter, though on that very account some writers on Civil Government would give it the first instead of the last place. In this study its position has been determined by the amount of knowledge supposed to be possessed by those for whom it is intended. In our grammar schools, and even in institutions of a higher grade, students know almost nothing of foreign governmental systems. Of course they know something about their own, and this knowledge is increased by a careful study of our political institutions. Indeed, the latter cannot be fully understood without some acquaintance with European and other foreign systems of government. When the pupil is in possession of this wider knowledge, it is believed that he can then consider with profit some of the fundamental ideas of political science and some of the more important questions of practical politics. The discussion of the rights and duties of American citizenship, then, has not been accidentally overlooked but has been reserved for this place by design.

Among other subjects our first chapter discussed the terms nation, government, and state. The last was described as the highest human authority acting on a given population. This definition will presently be treated at greater length. For many young students the conception of the state is not very clear. They find it difficult to imagine a power higher

than the government. Perhaps a new presentation of this subject will better enable them to grasp the idea of the state.

From what has been said in the preceding chapters it should be clear that our State governments as well as the Federal Government are restrained by an authority higher than themselves. The governors, the legislatures and the commonwealth courts are kept within certain bounds by their various constitutions and by the Constitution of the United States. The President, the Congress and the Federal courts are restrained by the Federal Constitution. Constitutions are therefore superior to the magistrates that make up our governments, but these constitutions were themselves made by the people. Under our system the people are the source of all political power. They can make constitutions, alter them or completely change them. In doing this they are accustomed to act through conventions.

Governments Restrained by Constitutions.

In a former chapter it was said that the township is not so much land as it is people. A state, too, is people quite as much as it is territory. We use this term in three different senses. We employ the term state to mean territory, government, or people. When we say that Texas is the largest State in the Union, we think only of its area. When we say that Maine is a prohibition State, we mean that its government forbids the sale of liquor. If it is said that Oklahoma adopted a constitution in 1907, we think of it as an act not of the land, which would be absurd, or of the government, but of the people. In the United States the word commonwealth or state suggests some one or more of these ideas.

The Term State.

The political scientist, however, knows France, Germany, and Italy as states. The members of our Union are not states in this sense, for they do not possess complete sovereignty. For this reason some writers prefer to call them commonwealths. It is the States united that constitute the same sort of political society as the United Kingdom of Great Britain and Ireland or France. The people of the United States, together with their dual system of government, form the state. But it is the people as a body politic—the people organized for defence and for the general welfare.

Our Commonwealths Are Not States.

To have a state, then, it is necessary to have: (*a*) a body of people socially and politically united; (*b*) a body of magistrates or officials who have charge of the political machinery that we call government, and (*c*) a body of customs or maxims to guide both magistrates and people. These customs or rules may be written, as the Constitution of the United States, or they may be partly written and partly unwritten, as the constitution of Great Britain. To be a state it is necessary that a community be absolutely independent of all other political communities, in fact, as independent as if there was no similar society in existence. The people of Afghanistan are a distinct race; they have laws, customs, a language and a government of their own, but they do not form a state because their foreign relations are regulated in certain particulars by Great Britain. The people of the state must, of course, have territory.

Notions of the State.

In this large society called the state there are many smaller ones. The most interesting, the most natural and the most important of these is the family. At different stages in the world's history the family has been differently organized. It is the basis of the tribe and the nation. If the members of every family in a particular town were ignorant and vicious and poor, it is plain that such a community would not be a progressive one. No useful institutions would be established therein and it would have no inclination or ability to assist other towns. Among such a people no schools would be maintained, no libraries or churches would be founded. Even if such institutions were established by some external influence, they could not flourish or continue long to exist in an ignorant and vicious community. If every social unit in the state were of the character of that described, the state would not be progressive, but within its borders civilization would turn backward. The welfare of the state, then, is inseparably bound up with that of the family, and any influence that tends to impair its virtue, intelligence or prosperity is an evil one. This is why religion is so concerned with domestic life. Its ministers realize that the family is the school of nearly all the virtues. It is in the bosom of the family that each of us first learns obedience; it is there, too, that we learn self-sacrifice, and love. These virtues are enjoined in the school and further confirmed by the church. If the duties of religion are not practiced in the home there is great danger that their exercise may be permanently neglected. It is the object of the state to improve the social efficiency of its citizens and of the church to improve them in a spiritual way. Before the Christian states of the world had become as enlightened as

The Family.

Importance of the Family.

Duty of State to Improve Citizens.

many of them now are the Church was the great agency, indeed it was almost the only one interested in preserving and making more perfect the life of the family. If, then, the unity and virtue of the family is so important, and this will not be denied, it is imperative upon the state to guard the home. In different ages it has been threatened in different ways, but in recent years the greatest menace to the unity of the family is the matter of divorce. If this concerned only the husband and wife who are separated by law, it would not be so grave an evil, but children are very frequently, and society is always affected. In permitting the institution to exist the state is unconsciously weakening itself for the trials of the future. These have come and they are bound to come again. Under our system the majority rules, and it is this majority that has enacted the laws regulating divorce. If, therefore, there is no reasonable expectation of obtaining the repeal of all divorce laws, it is still possible to work for their improvement. Perhaps the first step toward any improvement of the present practice in the matter of granting divorces will be to make them more difficult to obtain. When divorces cease to be so common as they now are, the social improvement then noticeable may encourage good citizens still further to curtail the granting of such decrees.

Divorce.

Difficulty of Obtaining Desirable.

Our first chapter discussed also the term citizen and showed that in ours as in every other country the people may be divided into two classes, *viz.*, (*a*) citizens, (*b*) aliens. In other words, we have in the United States persons who owe allegiance to its government and persons who owe allegiance to foreign governments. The democratic theory is that all citizens

Aliens.

are equal in the eye of the law. This, however, is not strictly correct, for naturalized citizens do not enjoy all the rights of natural born citizens. They are, for example, excluded from certain high offices. It is well known that we deny to women certain privileges and that they do not owe the same obligations as men. Except in four western states they do not vote in all elections. They do not owe military service in any of our commonwealths.

Citizens.

Civil Rights. Legal rights may be divided into (*a*) civil and (*b*) political. The former are concerned with the protection of life and property; by the possession of the latter a citizen is enabled to take part in government: for example, he can vote and hold office. The right to sue in the courts is a civil right, while the right to hold office is a political right.

Political Rights.

In the first chapter it was stated that a citizen may travel in foreign countries and while so doing is entitled to the protection of his own government. He has at home a right to full life: that is, he is entitled to protection for his life and for every useful part of his body. In other words, the state must guarantee him the protection of limb as well as life. The state, too, must assist him in safeguarding his property, and this is a wider term than lands or houses. He may, for instance, be entitled to inherit. Such inheritance is secured to him by law. In a preceding chapter it was stated that a citizen of one commonwealth has a right to enter another, to follow therein any lawful occupation or profession, to acquire and dispose of property while residing in such state. Patents and copyrights secure to him his intellectual property. He is entitled to use, though he may be punished for abusing the mails. Under certain regulations he can use the

Rights of Citizens.

navigable waters of the United States. If he prefer to dwell permanently in a foreign country, the law of the United States recognizes his right to denaturalize or expatriate himself. These and many other rights that might be mentioned are fundamental and they have long been enjoyed.

Duties of the State.

There are other rights that have resulted from the development of democracy. Citizens expect that the state will establish elementary schools for them. On this point there is considerable agreement. There is not, however, equal unanimity as to the duty of the state to establish high schools and normal schools. Many citizens hold that in offering instruction in the very elements of knowledge the state does its whole duty. At the present time there is scarcely any opposition to the establishment of schools for technical instruction. The Constitution of the United States, as we are told in its preamble, was ordained, among other things, to promote "the general welfare." In this is suggested the entire matter of development. It is because it broadens life that education is so favorably regarded. But citizens expect more of the state than is implied in the offer of elementary instruction. They want highways, protective tariffs, and irrigation. They expect the benefits of agricultural experiment and a system of banks that will insure a reliable means of exchange. From what has been said it is scarcely necessary to add that the functions of the state are becoming more numerous. Some commonwealths provide homes for afflicted citizens, as, for example, those suffering from epilepsy. It is doubtful whether even so late as half a century ago any of our states made provision for its epileptics.

Duties of State Increasing.

In addition to the civil and the political rights enjoyed

by American citizens one hears oftentimes about "the right to work," the "right to a living wage," *etc.* These express certain economic and ethical ideals and in time they may be embodied in the law. They are what some would call "natural rights" but they are not the rights of American citizens discussed in the preceding pages. They must first be recognized by the law. In America the tendency of the laws is to give to every citizen the utmost liberty consistent with the rights of others. A man, for instance, may speak freely on a great variety of subjects but this does not justify his resorting to libel or to slander. The "freedom of speech and of the press" guaranteed by the Constitution of the United States does not extend to an approval of violent methods in seeking to improve or to change the policy of government. A citizen may worship as he pleases, but the law will not uphold him in immoral practices. Its treatment of the Mormons is a case in point. A very good summary of the legal rights of American citizens will be found in the amendments of the Constitution of the United States. But it need hardly be observed that those seventeen articles do not include all our legal rights. In other words, the enumeration is not complete. From what has already been said it is clear that any adequate treatment of the subject of civil and political rights would require a volume instead of a chapter. The most that we can expect to do, then, is to suggest the nature of the subject. A few words concerning the duties of citizenship will conlude this brief study.

The "Right to Work."

Violence Not Legal.

During the Middle Ages the Feudal System was generally

established throughout western Europe. It seems to have grown up out of the military necessities of the times. Its leading ideas were *protection* and *obedience*. A powerful baron or lord promised protection to those who would submit to certain conditions which he always imposed. Any defenceless person by getting down on his knees and taking an oath of *homage*, an oath of *fealty* and submitting to the ceremony of *investiture* became the man or vassal of the lord. The chief duty of the latter was protection; while that of the former was obedience. Upon assuming the three obligations of homage, fealty and investiture the vassal or tenant bound himself to do certain things, *viz.*: To render yearly so many days military service, to contribute toward the ransom of his lord if the latter were captured by an enemy; also to offer gifts when the lord's oldest son was knighted. When his own son succeeded to the estate a fine was paid. At a later stage if the vassal wished to be excused from military service, he was required to pay a fine. Indeed, almost every important event in the life of the lord was made a pretence for imposing a fine upon the tenant or vassal. For all this the baron or lord promised, and so far as he was able to do so, gave protection.

Leading Ideas of Feudalism.

State Requires Allegiance; Gives Protection.

In modern times, too, the citizen owes obedience or allegiance not to any baron or lord but to the State, and the State gives him protection of life and property. In return for such protection the State expects and requires allegiance and fidelity to itself. This duty may take the form of military service. In theory every citizen may in an emergency be called upon to serve in the army,

Jury Service.

In practice, however, only the able-bodied men are required to enlist as soldiers. The State, too, sometimes requires of its citizens civil service. An example of this is seen in service on juries and from it no one is exempt. Judges, indeed, often excuse those whose names are drawn. Many people endeavor to avoid this duty. From this cause juries are often composed of the most ignorant and selfish men in the community. Professional men, lawyers, teachers and clergymen, often ask the judges to excuse them. Merchants also fear that their business interests might be injured by their absence while serving upon juries. It is not uncommon to hear our jury system severely criticised. That it is not better is clearly the fault of the more intelligent citizens who instead of performing a plain duty evade it and thus leave juries, grand and petit, to be filled by the less intelligent members of the community. The present jury system is far from being perfect but if citizens willed it, the results could be made much more satisfactory. The State, too, could require civil service from its citizens. Indeed in rural communities citizens are compelled to work on the repairs of the highways. Of course they would be excused from such labor by offering a money payment. It is in the power of the State to command the services of its citizens in civil as well as in military duties. As nearly all civil offices are salaried ones, no one is compelled to serve. Indeed, for every such office there are always many applicants.

Juries Could Be Easily Improved.

County, State, Nation May Require Service.

In the Civil War the United States Government required the services of millions of men. In case of insurrection each State can call out its able-bodied citizens to restore order, so also may each county to suppress smaller outbreaks.

Power of the State.

In theory the State can call out every citizen for military service, so also is it empowered to take every dollar in taxation. If, however, the State called all its citizens into the field, there would be no body of men at home to feed, arm and equip such soldiers. Hence the government never requires military service of all its citizens. Though in theory it could take all of one's property in taxes, it would not be prudent to do so, and no wise administration would even think of attempting it. The student should remember that the taxpayers have a great deal to do with the election of the officers of government. By adopting an unwise or burdensome system of taxation the officials would be almost certain to fail of re-election. The levying of taxes is a very delicate and a very intricate subject and the failure to adopt wise systems of taxation has led to the dismemberment of empires and the overthrow of dynasties. An unwise system of taxation adopted by the British Parliament led to the successful revolt of the American colonies. Too much taxes produced the terrible Revolution in France. This brief sketch will suggest some of the rights and duties of American citizens.

Taxation.

Divorce has been mentioned as a menace to the existence of a healthy State. The failure of the natural leaders of society to perform jury service has been noticed because of its impairment of the worth of an ancient and excellent institution. The intelligent members of a community might

well be pardoned for their indifference to jury service if that was their single fault. They appear to be not less indifferent to questions of municipal administration. It has already been remarked that our governments, State and Federal, are on the whole very well administered, but that our cities are not so well governed. Of course there are many exceptions. That our cities are not satisfactorily ruled is evident from the present tendency to substitute for the mayor a commission. This device is comparatively new and therefore its merits have not been sufficiently tested. There is no doubt that it possesses advantages but it also has limitations.

The Recall.

Another proof that our municipal or city governments are not satisfactory is the suggestion that an unsatisfactory executive should be *recalled* to private life. In this connection but a single observation appears to be required. It matters little whether we live under the system of a single city executive, government by a commission, or whether we insert in our laws a provision for recall, municipal government is doomed to failure unless the citizens themselves, especially the more intelligent, are active, vigilant, and incorruptible. Every citizen should participate in the choice of city officials and should endeavor to bring about the punishment of the giver as well as the taker of bribes. If he is careful in the selection of municipal officers they will be less likely to be parties to any of those questionable transactions comprehended by the name "graft". It does not matter much what may be the form of city government, *no form is automatic, but every one of them requires the enlightened guidance of vigilant citizens.* But watchfulness alone is not

Remedy in the Citizen.

Form of Government Not So Important.

sufficient. Under our democratic system it is not less the duty of every citizen to be educated. We need not in this place inquire what education is of most value. All that need be said is that whatever sciences he may know every adult citizen should at least be familiar with our political system. Finally it should be remarked that intelligence counts for little, if character be lacking.

SPECIMEN REVIEW QUESTIONS ON EACH CHAPTER

ON INTRODUCTION

1. What is said concerning the name of this subject? 2. Can there be government other than civil government? 3. What is the fundamental idea in the word *constitution?* 4. Distinguish the terms *nation, state,* and *government.* 5. How does Aristotle classify states? 6. Define the terms *inhabitant, citizen, voter.* 7. Are most of the women and children of the United States citizens? 8. What is the source of all political power in the United States? 9. Tell what you know of the differences between the *Articles of Confederation* and the present *Constitution of the United States.* 10. Are the State constitutions of any importance?

CHAPTER II

1. What great event dispersed Italian navigators among the maritime nations of western Europe? 2. What five powers claimed parts of the Atlantic coast of North America? 3. Is England's greatness a result of the revolt of Luther? 4. What was the scene of French activity in exploring and colonizing? 5. What state was first settled by Swedes and Finns? 6. What country was embraced under the name Acadia? 7. What was Louisiana and what was Canada? 8. Name the three principal campaigns of the Revolutionary War. 9. What was the attitude toward the United States of the principal powers of Europe? 10. What led to the formation of the league known as the United Colonies of New England?

CHAPTER III

1. Was the consideration military or economic which, in 1666, brought about an agreement among Maryland, Virginia and Carolina? 2. What was the first meeting of the North and the South to attain a common object? 3. What was the motive for the plans of union between 1689-'97? 4. Who were the Lords of Trade and Plantations? 5. Prepare a brief outline of the Albany plan of 1754. 6. What was its fate? 7. What is the significance of the Stamp Act Congress? 8. Describe foreign relations (after 1783). 9. What were the controversies among the States (between 1783 and 1789)?

CHAPTER IV

1. When and where did the Constitutional Convention meet? 2. When did it finally adjourn? 3. Did all the delegates sign the proposed Constitution? 4. Who presided in the Convention and who were the best known members? 5. What were the chief plans before the Convention? 6. What was the strongest argument against the Articles of Confederation? 7. What were the members empowered by their credentials to do? 8. On what plan did the commissioners base their work? 9. What was made the chief ground of opposition to the Constitution? 10. What was the Federalist?

CHAPTER V

1. What are the principal parts of the Federal Constitution? 2. Why is the Preamble important? 3. What gave effect to the Frame of Government prepared by the Philadelphia Convention of 1787? 4. What was emphasized in the Preamble of the Constitution of the Confederate States of America? 5. Discuss secession as a Constitutional remedy. 6. Discuss the elements of novelty in the Constitution. 7. Before July 28, 1868, how was population ascertained for Federal purposes? 8. What three sorts of functions are performed by the United States Senate? 9. Define the term impeachment.

CHAPTER VI

1. What is the American idea of impeachment? 2. How many civil officers have been convicted under this process? 3. Do you regard it as efficient? 4. Under what law and in what manner are United States Senators chosen? 5. Explain the long and the short sessions of Congress. 6. What is an executive session of Congress? 7. What was the Joint Committee on Reconstruction? 8. Why was General Washington not inaugurated on March 4th? 9. How does the present system of compensating Congressmen differ from that which existed under the Articles of Confederation?

CHAPTER VII

1. What limitation is placed upon the power of the Senate in the matter of originating bills? 2. What two kinds of powers does Congress possess? 3. What is a tax, and upon what may taxes be levied? 4. For what purposes does the Constitution confer upon Congress the power to lay and collect taxes? 5. What is a Government bond, and

why is it exempt from State taxation? 6. Is there any species of commerce which Congress cannot regulate? 7. Give an illustration. 8. What are two important elements of commerce? 9. Have the several States any share in the regulation of commerce? 10. What is meant by the police power of the States?

CHAPTER VIII

1. What foreign peoples have become citizens of the United States without being naturalized? 2. What territory has been acquired for the inhabitants of which no provision as to citizenship has yet been made? 3. What races can be naturalized? 4. If State courts may grant citizenship to aliens, from what source do they derive the power so to do? 5. What are the two important elements in a bankruptcy law? 6. What is a legal tender? 7. What construction have the courts given to the phrase "to coin money and regulate the value thereof"? 8. What is the status in the United States of the Metric System? 9. Is a post office in the legal sense always a building? 10. By what systems of laws may the intellectual property of a citizen be secured?

CHAPTER IX

1. What is piracy, and what is the attitude of civilized states toward it? 2. In what respect does a privateer differ from a pirate? 3. What is the meaning of the term felony? 4. What is the law of nations? 5. As used in the Constitution, what is the significance of the expression "high seas"? 6. State the important principle involved in the Whiskey Insurrection. 7. Why did anti-slavery societies petition Congress to abolish involuntary servitude in the District of Columbia? 8. Explain the phrase "necessary and proper." 9. Discuss the Writ of Habeas Corpus. 10. What authority can suspend its privileges?

CHAPTER X

1. What proof is there that slavery was recognized by the Constitution? 2. Define "bill of attainder," "bill of pains and penalties," "*ex post facto* law." 3. Why does the Constitution prohibit Congress from taxing exports? 4. Besides the express limitations upon the power of Congress are there any others? 5. Discuss secession with reference to the constitutional provision. 6. Define a contract. Dis-

cuss the Dartmouth College case, and state why the action of the State legislature of New Hampshire impaired the obligation of the existing contract.

CHAPTER XI

1. Why does the Constitution vest the chief executive power in one person rather than in a commission? 2. Do the people vote directly or indirectly for a President? 3. Describe the successive steps in the election of a President. 4. What authority do the States possess over the mode of appointing Presidential electors? 5. State the principal changes made by the XII Amendment. 6. Does either the House or the Senate in any contingency elect a President or a Vice-President? 7. What was the Electoral Commission? 8. Discuss the question of "a third term." 9. What nominating methods preceded the National Nominating Convention? 10. State the provisions of the Presidential Succession Act.

CHAPTER XII

1. What is a minority President? 2. Explain how a President can receive a majority of the electoral votes and yet receive a minority of the popular vote. 3. How can the electoral vote of a State be divided between candidates of opposing political parties? 4. How does the Constitution safeguard the independence of the President in the matter of compensation and of the veto? 5. What makes the executive so much greater a factor in the National Government than the Congress or the Judiciary? 6. In the actual administration of government which is more efficient—the absolute negative on legislation of a British sovereign or the veto of an American President? 7. What is a pocket veto, and is it in perfect harmony with the Constitution? 8. Is the President obliged to consult his cabinet or to submit to their advice? 9. In what accessible document can one find an account of the organization and functions of the Executive Departments?

CHAPTER XIII

1. What Article of the Constitution introduces this chapter? 2. What court is mentioned in the Constitution? 3. Has Congress any authority in the establishment of a Federal Judiciary? 4. What important matters are beyond the control of Congress? 5. What difference exists between most of the State Judicial systems and that

of the United States? 6. Describe the organization and the distribution of U. S. District Courts. 7. Discuss the other Federal courts in the same manner. 8. What is said of the U. S. Supreme Court? 9. Why was the Federal Judiciary established? 10. What are the dangers of the Eleventh Amendment? 11. What is said of treason? 12. What was the situation of citizens of the Confederate States in respect to treason?

CHAPTER XIV

1. What is the object of section 1, of Article IV? 2. Where is it more fully explained than in the Constitution? 3. What delayed somewhat the admission of Missouri? 4. What is said respecting the extradition of criminals? 5. Did the provision for the return of fugitives apply to any class except slaves? 6. What was the bearing of the Fugitive Slave Law upon the Civil War? 7. Discuss the provision for the division of a State. 8. What is an enabling act? 9. What is meant by "a republican form of government"?

CHAPTER XV

1. What was the most serious defect in the Articles of Confederation? 2. What was in the power of a single State? 3. Under the Constitution is it possible for a few States to prevent an amendment? 4. What is termed the American principle? 5. Is there any limitation upon the power of amendment? 6. What is the supreme law of the land? 7. Explain the Bill of Rights and discuss some of the principal provisions. 8. What were the Virginia and Kentucky Resolutions? 9. What is meant by the phrase "due process of law"? 10. What is Eminent Domain?

CHAPTER XVI

1. Relate briefly the history of the Thirteenth Amendment. 2. In view of Lincoln's Emancipation Proclamation why was it necessary to pass that amendment? 3. What concrete question led to the Civil War? 4. Does birth in the United States confer citizenship? 5. How did the Fourteenth Amendment affect Southern Representation in Congress? 6. Why cannot the Southern States disfranchise all negroes? 7. Is there any likelihood that the Confederate debt will ever be paid? 8. How was the suffrage regulated at the time the Constitution was adopted? 9. Does the Fifteenth Amendment give

the negro the right to vote? 10. What is said of the extent of constitutional history?

CHAPTER XVII

1. What is the sphere of Federal activity? 2. To what matters do the State governments attend? 3. For convenience of administration how are the various States divided? 4. What is said of the school district? 5. What sort of political knowledge is possessed by rural school children? 6. Describe the historical origin of the Township. 7. What is a "town-meeting"? 8. Name the town officials. 9. Is local government always and everywhere the same? 10. Does the term town signify anything more than area? 11. Is the Town-Meeting a legislative, an executive or a judicial body?

CHAPTER XVIII

1. What is the unit of local government in New England? 8. What is it in the South? 3. In what State is the Parish the unit of local government? 4. What is said of the origin of the township? 5. Of the county? 6. Describe the organization of the county in Massachusetts. 7. What were the conditions that tended to build up an aristocracy in Virginia? 8. Why was there no town life in that State? 9. What was the vestry? 10. What sort of men were produced by the New England system and what by the Virginia system?

CHAPTER XIX

1. What auditing function is performed by the legislature of Virginia? 2. In what States are the governmental units known as parishes, hundreds, etc.? 3. What is the institution known as the Initiative? Define the Referendum. 4. What are the provisions of the Oklahoma constitution respecting the Initiative and the Referendum? 5. What is said of town and county government in the United States? of city government? 6. Why is the subject of municipal government new in the United States? 7. What is said of its future? 8. Are our municipal governments homogeneous? 9. Is there any advantage of stripping the mayor of nearly all power? 10. Have State legislatures all the qualifications required to supervise city governments? 11. Discuss municipal government by commission. 12. Are the cities with the greatest proportion of foreign-born voters the most corrupt? 13. What is said of party loyalty?

CHAPTER XX

1. Why has the subject of the rights and duties of American citizens not been discussed before? 2. Discuss the State. 3. Name the essentials of a State. 4. Are our commonwealths States? 5. Discuss the family. 6. In what way is it menaced? 7. How are legal rights divided? 8. State the fundamental rights and some important duties of citizens. 9. What is said of jury service? 10. What is illustrated by municipal government, by commission, by recall?

APPENDIX A.

ARTICLES OF CONFEDERATION

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I. The style of this Confederacy shall be "The United States of America."

ART. II. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

ART. III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States, and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor

or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years, nor shall any person, being a delegate, be capable of holding any office under the United States for which he or another for his benefit receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to or from, and attendance on, Congress, except for treason, felony, or breach of the peace.

ART. VI. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the pur-

poses for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such State or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only as in the judgment of the United States in Congress assembled shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia; sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ART. VII. When land forces are raised by any State for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII. All charges of war and all other expenses that shall be

incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, and such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

ART. IX. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following:—Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be

directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the Supreme or Superior Court of the State where the cause shall be tried, "*well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward,*" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdictions as they may respect such lands and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; and to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years—to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller

number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared: and the officers and men, so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on, by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy, and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with: provided that no power be delegated to the said

Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART XI. Canada, acceding to this Confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

AND WHEREAS it hath pleased the Great Governor of the world to incline the hearts of the legislatures we respectfully represent in Congress to approve of and to authorize us to ratify the said Articles of Confederation and perpetual Union, KNOW YE, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents that they shall abide by the determinations of the United States in Congress assembled, on all questions which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and the Union shall be perpetual.

APPENDIX B.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

WE THE PEOPLE* of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION 1.

1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2.

1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2. No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania

* In the original the clauses are not numbered, nor is there any title to the document. It begins, "WE THE PEOPLE."

eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

5. The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.*

2. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year; so that one third may be chosen every second Year; and if Vacancies happen by Resignation or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointment until the next Meeting of the Legislature, which shall then fill such Vacancies.

3. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

5. The Senate shall chuse their other Officers, and also a President pro tempore in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the

* See Amendment XVII.

Party convicted shall, nevertheless, be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4.

1. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

2. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5.

1. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

3. Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

4. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6.

1. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech

or Debate in either House, they shall not be questioned in any other Place.

2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a member of either House during his Continuance in Office.

SECTION 7.

1. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections, to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

3. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment), shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8.

1. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

2. To borrow Money on the credit of the United States;

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

4. To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

7. To establish Post-Offices and post Roads;

8. To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

9. To constitute Tribunals inferior to the supreme Court;

10. To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

13. To provide and maintain a Navy;

14. To make Rules for the Government and Regulation of the land and naval Forces;

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions;

16. To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature

of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

18. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9.

1. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

3. No Bill of Attainder, or ex post facto Law shall be passed.

4. No Capitation or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

5. No Tax or Duty shall be laid on Articles exported from any State.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties, in another.

7. No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

8. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10.

1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Pay-

ment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any title of Nobility.

2. No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws; and the net Produce of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

3. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops or Ships of War, in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or Engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II.

SECTION 1.

1. The Executive Power shall be vested in a President of the United States of America. He shall hold his office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows:

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

3. *The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the

* See Amendment XII.

greatest number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such a Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse, by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List, the said House shall in like manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

4. The Congress may determine the Time of chusing the Electors, and the day on which they shall give their Votes; which Day shall be the same throughout the United States.

5. No Person except a natural-born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

6. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be Increased nor diminished during the Period for which he shall have been elected, and he shall not reecive within that Period, any other Emolument from the United States, or any of them.

8. Before he enter on the Execution of his Office he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United

States, and will, to the best of my Ability, preserve, protect, and defend the Constitution of the United States."

Section 2.

1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the Executive Departments, upon any Subject relating to the Duties of their respective offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

2. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other Public Ministers, and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

3. The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of the next Session.

Section 3.

1. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall commission all the Officers of the United States.

SECTION 4.

1. The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION 1.

1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2.

1. The judicial Power shall extented to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State or the Citizens thereof, and foreign States, Citizens, or Subjects.

2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make.

3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3.

1. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV.

SECTION 1.

1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prsecribe the manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

SECTION 2.

1. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

2. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the Crime.

3. No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

2. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4.

1. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

1. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislature of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

ARTICLE VI.

1. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be

bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any office or public Trust under the United States.

ARTICLE VII.

1. The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty-seven and of the Independence of the United States of America the Twelfth. *In Witness* whereof We have hereunto subscribed our Names,

G°: WASHINGTON—*Presidt. and deputy from Virginia.*

Attest William Jackson Secretary.

New Hampshire:
John Langdon
Nicholas Gilman

Massachusetts:
Nathaniel Gorham
Rufus King

Connecticut:
Wm: Saml. Johnson
Roger Sherman

New York:
Alexander Hamilton

New Jersey:
Wil: Livingston
David Brearley
Wm. Paterson
Jona: Dayton

Pennsylvania:
B Franklin
Thomas Mifflin
Robt. Morris
Geo. Clymer
Thos. Fitz Simons Catholic
Jared Ingersoll
James Wilson
Gouv Morris

Delaware:
Geo: Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jaco: Broom

Maryland:
James McHenry From Dublin. Ft. Mc Henry.
Dan of St. Thos. Jenifer
Danl Carroll Catholic

Virginia:
John Blair—
James Madison Jr.

North Carolina:
Wm: Blount
Richd. Dobbs Spaight
Hu Williamson

South Carolina:
J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

Georgia:
William Few
Abr Baldwin

[*Articles in Addition to and Amendment of the Constitution of the United States of America, Proposed by Congress and Ratified by the Legislatures of the several States, Pursuant to the Fifth Article of the Constitution.*]

(ARTICLE I.)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(ARTICLE II.)

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(ARTICLE III.)

No soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor, in time of war, but in a manner to be prescribed by law.

(ARTICLE IV.)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(ARTICLE V.)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(ARTICLE VI.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of Counsel for his defence.

(ARTICLE VII.)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

(ARTICLE VIII.)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(ARTICLE IX.)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(ARTICLE X.)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

(ARTICLE XI.)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

(ARTICLE XII.)

SECTION 1.

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall

consist of two-thirds of the whole number of Senators, a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

(ARTICLE XIII.)

SECTION 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2.

Congress shall have power to enforce this article by appropriate legislation.

(ARTICLE XIV.)

SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(ARTICLE XV.)

SECTION 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2.

The Congress shall have power to enforce this article by appropriate legislation.

(ARTICLE XVI.)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(ARTICLE XVII.)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive authority thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

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